

2017

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Recommended Citation

David J. Garrow, *In Honor of Fred Gray: The Meaning of Montgomery*, 67 Case W. Rsrv. L. Rev. 1045 (2017)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol67/iss4/11>

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IN HONOR OF FRED GRAY: THE MEANING OF MONTGOMERY*

David J. Garrow[†]

Thank you. It is a great honor to be here and to see Attorney Fred Gray again. I told him last evening that I remember when I first met him by going to his office in Tuskegee in August of 1985, and that's thirty-one years ago, and it is great to see that he is still in such fine fettle thirty-one years later.

There are two most crucial things to understand about the meaning of the Montgomery Bus Boycott. The first is that in its origins the bus boycott was a women's movement. It was a women's movement even before Fred Gray first came here to Case in 1951 to start law school, because the black women in Montgomery, first coming together in 1946 to form the Women's Political Council, had been thinking about organizing a bus protest from 1949 onward.¹ It was a recurring subject among black women in Montgomery, that they were horribly mistreated on a regular basis by Montgomery City Lines bus drivers. So this was a long-festering and very well-known problem, even long before December 1, 1955.²

In the forty-plus years that I have been doing historical research, arguably my favorite document that I have ever seen was handed to me sometime circa 1980 by Johnny Evans, then the Montgomery County District Attorney. It was in the prosecution file that dated from when that office indicted all of the leadership of the bus boycott in early 1956, and it was a letter from Jo Ann Gibson Robinson, an English professor at Alabama State College, and the president of the Women's

* The following is based upon a transcript of Professor Garrow's presentation at the symposium, In Honor of Fred Gray: Making Civil Rights Law from Rosa Parks to the 21st Century on October 14, 2016, at Case Western Reserve University School of Law.

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1. DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 14 (1986).

2. *Id.*

Political Council, whose family was from here in Cleveland.³ She herself had been born in Georgia, but that document was a letter from Mrs. Robinson to W. A. “Tacky” Gayle, the mayor of Montgomery, threatening a bus boycott, and the date on that letter—and everybody in this room will probably understand the connection as soon as I say that date without having to explain it—the date on that letter was May 21, 1954, *four days* after *Brown v. Board of Education*.⁴ And so it is very clear how Mrs. Robinson and her compatriots in the Montgomery women’s movement took inspiration from the meaning of *Brown*.

Now this is, as you realize, a good eighteen months before when Mrs. Rosa Parks was arrested on December 1st, 1955, and when the word spread that day of her arrest, the women moved into action within hours. Mrs. Robinson and other colleagues at Alabama State spent that night very quietly, very secretly mimeographing thousands of leaflets calling for a bus boycott the following Monday, December 5th.⁵ And so that protest effort was underway even before E. D. Nixon—the dean of civil rights activists in Montgomery—started telephoning around to the black ministers of Montgomery asking them to assemble and to organize a mass meeting for the evening of December 5th at Holt Street Baptist Church.

Now, when black Montgomery began that protest on December 5th, there are two important things to emphasize. Number one, they did not start out asking for desegregation of the buses. They had very modest, limited demands. If any of you know the details of Mrs. Parks’s arrest, she was arrested for not surrendering her seat along with three other black riders so that one white man who had gotten on the bus could sit down. The rule in Montgomery was not only that black people had to surrender their seats for new white riders, but that black people could not sit parallel to white people. So the gravamen of so much of the tension in black Montgomery was about how black riders were forced to stand up in deference to white people.

Now, black Montgomery, since they were asking for such modest demands there at the beginning, had a perhaps naive optimism that white officials would negotiate a solution to this problem very quickly. Folks were not imagining at all that this was a protest that would go on for more than a week or so. But the great irony of those first few weeks in Montgomery is that white city officials realized just how fundamentally challenging the bus protest was in a way that the black activists themselves initially did not. If I can read one line from Mrs. Robinson here: “They feared that anything they gave us would be

3. *Id.* at 15; *see also* JO ANN GIBSON ROBINSON, *THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT*, at viii (David J. Garrow ed., 1987) (reproducing a copy of the letter).

4. 347 U.S. 483 (1954), *supplemented* 349 U.S. 294 (1955).

5. GARROW, *supra* note 1, at 16–17.

viewed by us as just a start. And you know, they were probably right.”⁶ That dawns on Dr. King, Mrs. Robinson, Ralph Abernathy, Mr. Nixon, and Mr. Rufus Lewis only when the initial negotiating sessions with the white city commission and with other white civic leaders go nowhere. Dr. King, in particular, was astonished and disappointed that white Montgomery ministers, in particular, did not respond whatsoever to the moral appeal for justice and better treatment that the black representatives were voicing to them. So as the days and weeks go forward in December of 1955, after December 5th, black Montgomery gradually realizes this is going to be a multi-week, maybe multi-month protest. White city officials for several years had been quite relatively moderate in their behavior towards black Montgomery. There were 1,500 registered black voters in Montgomery County at that time, and they mattered in city elections—indeed they made the difference in several races in 1953 and 1955.

So it came as a great shock to black Montgomery that what they thought was a culture of political accommodation had now been replaced by an incredibly hardline attitude on the part of white city officials. As I know Attorney Gray remembers all too well, throughout January of 1956, white Montgomery officials increasingly implemented what they called a “get tough” policy of going after Dr. King and the other visible activists in black Montgomery.

As I think probably everyone here will understand, the women who had been so crucial in getting the boycott started did not become the public face of the protest; the ministers do instead because the black women were all either employed at Alabama State or in public schools and thus were very vulnerable to economic retaliation and the loss of their jobs. It was only years later that people came to realize, particularly through the really superb pioneering work of J. Mills Thornton III, the first serious historian of the boycott, just how crucial Mrs. Robinson and Mary Fair Burks and Irene West and the other ladies were.⁷

That “get tough” policy culminated with the attempted bombing of Dr. King’s parsonage, 309 South Jackson Street, at the end of January. By that time Attorney Gray and Thurgood Marshall and the other lawyers at the NAACP LDF had already been discussing and looking towards filing a federal court lawsuit. *Browder v. Gayle*⁸ is then filed in the immediate wake of that first bombing on February 1st.⁹ And this, as I think you immediately realize, represented a fundamental

6. *Id.* at 640 n.38 (citing ROBINSON, *supra* note 3, at 19).

7. *See, e.g.,* J. Mills Thornton III, *Challenge and Response in the Montgomery Bus Boycott of 1955–1956*, 33 ALA. REV. 163–225 (1980); *see also* J. MILLS THORNTON III, *DIVIDING LINES* 32–33, 46–47, 55, 61 (2002) (explaining how crucial the above-named women were during the boycott).

8. 142 F. Supp. 707 (M.D. Ala. 1956), *aff’d* 352 U.S. 903 (1956) (mem.).

9. GARROW, *supra* note 1, at 61.

shift on the part of black Montgomery where they are now, somewhat tardily you might say, asking for full desegregation of the buses rather than just those very modest initial seating demands.

But even in January 1956 and moving forward, there was a fundamental underlying tension in the bus protest, one that should especially be emphasized and underscored in a law school setting. For LDF attorneys like Thurgood Marshall, and like wonderful Jack Greenberg, who passed away just a few days ago,¹⁰ the strategic lesson of *Brown*—and Thurgood Marshall would say this very bluntly, very assertively at times—was that civil rights progress would be won in the courts, and that civil rights leadership should come from lawyers. The Montgomery protest even in its first few weeks represented a fundamental, inherent, implicit strategic challenge to that lawyer-centric leadership lesson of *Brown*. And by early 1956, when *Browder* was filed, there already was the underlying question: if the fundamental issue is now in Federal District Court for the Middle District of Alabama, does black Montgomery need to continue boycotting the buses? But black Montgomery realized that the meaning of the protest as a mass community action went well beyond simply raising the constitutional question of when will the federal courts extend *Brown* to public transit. So the protest went forward.

By March and April of 1956, with the Montgomery City Lines bus company on the verge of going out of business, the company leadership wanted to reach an accord with black Montgomery, so that riders would return and the bus company could stay in business. The white elected officials, however, maintained a hard line position. They indicted almost one hundred members of the black Montgomery community on February 21st. Everyone dressed in their Sunday best to appear downtown at the county courthouse for arraignment. People were no longer deeply frightened by the threat of arrest and prosecution; they now were actually proud of it. Then, on April 23rd, the U.S. Supreme Court dismissed on procedural grounds the appeal of a Fourth Circuit ruling,¹¹ where the appellate court had extended *Brown's* repudiation of “separate but equal” to public transportation.¹² That represented the high court’s application of *Brown* to public transit, but Montgomery officials refused to acknowledge that.

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10. Richard Severo & William McDonald, *Jack Greenberg, a Courthouse Pillar of the Civil Rights Movement, Dies at 91*, N.Y. TIMES (Oct. 12, 2016), <https://www.nytimes.com/2016/10/13/us/jack-greenberg-dead.html> [<https://perma.cc/MM4F-5W43>].
 11. S.C. Elec. & Gas Co. v. Flemming, 351 U.S. 901 (1956) (mem.) (citing *Slaker v. O'Connor*, 278 U.S. 188 (1929) (dismissing appeal because decision appealed was not final)).
 12. *Flemming v. S.C. Elec. & Gas Co.*, 224 F.2d 752, 752–53 (4th Cir. 1955) (noting that, in *Brown*, “the separate but equal doctrine approved in *Plessy v. Ferguson* has been repudiated” and “[t]hat the principle applied in the school cases should be applied in cases involving transportation”).

Browder v. Gayle went forward before a three-judge court in Montgomery with a hearing on May 11. The three-judge court opinion unsurprisingly came down on June 5.¹³ That was appealed over the summer to the U.S. Supreme Court, and as *Browder v. Gayle* slowly moved forward, white Montgomery maintained its obstinacy. The mass community-wide bus boycott continued onward week after week, month after month, drawing increasing national attention and making Dr. King increasingly a nationally visible figure.

Finally, on November 13, 1956, when the boycott leaders were in local court in Montgomery confronting yet another effort by local white officials to put the car pool system that the black community has been operating out of business, just at that particularly dark moment came the unsurprising news that the Supreme Court had, of course, affirmed the three-judge Alabama federal court opinion in *Browder v. Gayle*.¹⁴ But city officials petitioned for a rehearing, and that delayed the arrival of the mandate in Montgomery until December 20, 1956, by which time the boycott had been going for 382 days.¹⁵

Thus the real fundamental story of Montgomery is the mass community protest that kept this phenomenal effort going for over a year. Only on the side was there the far less surprising, far less striking extension of *Brown*, first in the South Carolina case¹⁶ and then in *Browder v. Gayle* itself.

Montgomery thus represented a fundamental challenge to the NAACP's *Brown v. Board*-based expectation of how civil rights progress was going to proceed. Throughout black America, activists like A. Philip Randolph, Bayard Rustin, and Ella Baker realized that the lesson of Montgomery was how thousands of black citizens acting on behalf of their own empowerment, rather than waiting for lawyers to lead them toward victory at the hands of a then still almost entirely white judiciary, had persevered and triumphed.

So even though Mrs. Robinson's first letter to Mayor Gayle back in May of 1954 was inspired by *Brown*, to me the real deeper historical meaning of Montgomery is how it represented a fundamental shift away from the Charles Houston, Thurgood Marshall, *Brown v. Board*, and "Simple Justice" litigation-focused strategy for civil rights progress. It represented a fundamental change from that belief that advancement toward racial equality was principally going to take place in the federal courts.¹⁷

13. *Browder*, 142 F. Supp. at 707.

14. *Gayle v. Browder*, 352 U.S. 903 (1956) (mem.).

15. GARROW, *supra* note 1, at 82 (noting that the order arrived in Montgomery on December 20, 1956).

16. *Flemming*, 224 F.2d at 752-53.

17. RICHARD KLUGER, *SIMPLE JUSTICE* (Vintage Books 1977) (1975).

Now, that shift did not really begin to pick up further steam until February 1, 1960, when the sit-in movement kicked off and then spread so rapidly across the South. However, to me that change is what is so distinctive about what the people of black Montgomery achieved. History went for many years with Mrs. Robinson and Mrs. Burks and many other crucial people in black Montgomery going completely unrecognized, and we even went many years before Rosa Parks was acknowledged as a significant historical figure too. Only first in the 1970s, and then really in the 1980s, did people start to learn how much of the story of the Montgomery bus boycott was fundamentally a story about the unheralded but invaluable civic activism of black women.

I believe it is phenomenally valuable to realize how it was actually that mass community involvement that represented black Montgomery's great achievement, rather than the relatively minor doctrinal extension of *Brown* thanks to *Browder v. Gayle*. Thank you very much.

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AUDIENCE MEMBER: So after the decision saying you can't have segregation on your buses, what happened to the buses after that? What happened to the bus company after that, and what's the bus system like now?

PROFESSOR GARROW: Come December 21, 1956, the black community goes back on the buses. The buses are running, and for several months, there is a fair amount of ongoing white terrorism against the buses. There is a much longer story that I shouldn't try to tell here about how in Montgomery, how in Birmingham, how across Alabama there were good cops and there were bad cops. Almost everyone in Montgomery knew who was organizing the white violence, a man named Sonny Kyle Livingston. He was behind the bombings, and white law enforcement, even more notoriously in Birmingham, of course, was tolerating that. So the black community in Montgomery and the bus company were facing these continuous episodes of violence going forward. The buses survive. It is a very tense situation at Alabama State. Mrs. Robinson, Mrs. Burks, and Lawrence Reddick, a well-known black historian, are all forced out and all have to leave Montgomery. Alabama State students participate in the black student movement come 1960, but by that time, Dr. King has moved to Atlanta, and Mrs. Parks, unable to get employment in Montgomery, has left for Detroit. So there is some sadness and some disappointment and some pain in black Montgomery in the wake of the boycott.

AUDIENCE MEMBER: Let me ask you to put your prognosticator's hat on.

PROFESSOR GARROW: Oh, geesh.

AUDIENCE MEMBER: Let us say that the bus company had followed the South Carolina ruling and had decided to go ahead and desegregate at that moment, what then happens to Martin Luther King, Jr.? What happens to the civil rights struggle if we don't have this boycott?

PROFESSOR GARROW: I am looking at Attorney Gray as I say this: I know that the city commission there in April is threatening the bus company, and I would have to look back at the documents on this. Jack Crenshaw, the bus company attorney, was a hard-eyed sort of guy, but it is the threats coming from the elected officials that keep the bus company from going ahead and desegregating. By April, the protest is nationally and internationally known. The national press coverage really kicks off following the attempted bombing of Dr. King's house at the end of January and especially ramps up after those mass indictments of Dr. King and everyone else. So even if the bus company had followed the Columbia precedent, there still would have been the ongoing prosecution of the black leadership for violating this old originally anti-labor, Alabama state anti-boycott statute. So even without going on for another seven months or so, I think the boycott still would have represented a new model. And Bayard Rustin was the crucial person in pushing Dr. King and Reverend Abernathy and the other ministers to create SCLC, the Southern Christian Leadership Conference. January of 1957, three or four weeks after the conclusion of the boycott, is when they first create SCLC. The ministers were all in Atlanta founding SCLC when there was another round of bombings targeting Reverend Abernathy's church, First Baptist, Mr. Nixon's home, Reverend Bob Graetz's home, and others. So even though the boycott ended in this tremendous victory—I think many of you have seen the photo of King, Abernathy, and Glenn Smiley, another white northern-based civil rights activist, all on the first bus that morning of December 21—things remained really tense and difficult, but it is the inspiration of Montgomery's community movement that leads to the creation of SCLC.

AUDIENCE MEMBER: In the '60s, I was personally arrested with different citizens and various things, and it was no big deal, but my suspicion is that was not the case for Mrs. Parks. Could you speak to some of the terrors and risks that she braved when she refused to give up her seat?

PROFESSOR GARROW: As I think many of you know, Mrs. Parks had been very active in the NAACP for years. She had been their youth council adviser there in Montgomery when Claudette Colvin, a young lady whom Attorney Gray represented, was arrested in March of 1955, and black Montgomery had thought about going forward with a protest over the Colvin case. So Mrs. Parks had a long history and a long familiarity with this well before December 1st. She was well known. She is frankly not targeted in the same way as Dr. King, Mr. Nixon, Reverend Abernathy, and Bob Graetz—I should say for people who don't know his name that Bob was a white Lutheran minister of an all-black congregation. When I visited Bob in 1984, he was living in McArthur, Ohio, a village southeast of Columbus.

Mrs. Parks's real issue was that she was fired and could not get a job. Virginia and Clifford Durr, whom I have been remiss in not mentioning up until now, really befriended Mrs. Parks. Cliff was an older

white lawyer, who, as I am certain Fred will say, tremendously helped and advised him in this. The Durrs had known her quite well earlier. They had encouraged her to go to Highlander Folk School, and so they give great support to her as well as to Fred, but that's what leads Mrs. Parks to having to leave Montgomery and move to Detroit.

AUDIENCE MEMBER: A couple questions: first, picking up on Kevin Brown, what if there had been no litigation?

PROFESSOR GARROW: Well, you have got the Columbia case.¹⁸ Again, I am going to defer to Fred on this, and he can address it later, but I think there is no chance that they would not have filed, and—not trying to be too rosy here because you have got Fred there—if this had been a bus protest in a city where there was not any African American lawyer, any African American lawyer who was in touch with LDF, maybe then you could think about that scenario. Now, the Baton Rouge bus protest in 1953, which a few people may be aware of, results in a negotiated settlement without any litigation, and as a result of that it is extremely little known to history.¹⁹ But given the situation in Montgomery, my answer would be that it was inevitable that at some point they were going to file that federal case.

AUDIENCE MEMBER: So next question: The black community had lots of factions in Montgomery. How do you explain the remarkable unity that took place for that long period of time?

PROFESSOR GARROW: I think Rufus Lewis deserves some of the credit for that in putting Dr. King forward as the new spokesman because King is so new in town that he is not allied with any particular faction, even though the church he pastors, Dexter, is the middle-class church that Mr. Lewis and Mrs. Robinson are members of. Everyone had a lot of respect for Mr. Nixon and Mr. Nixon's courage, but Mr. Nixon was not a college graduate or a college professor. But the community really comes together for that year in a way that, for that time, pushes that factionalism pretty much aside. Now, come the summer of 1956, there are some incidents where that burbles up,²⁰ and especially once you get into 1957 and 1958, it burbles up again.²¹ Let me have Fred kick in here.

MR. GRAY: Actually, that issue had been discussed in detail. If you read "Bus Ride to Justice," that launched the plans for all the busing at a meeting in Jo Ann Robinson's house on December 1st [1955] into the early morning of the 2nd.²² We recognize the fact that E. D. Nixon was there, that Rufus Lewis was there, and that had to be dealt

18. *S.C. Elec. & Gas Co. v. Flemming*, 351 U.S. 901 (1956).

19. *See* Adam Fairclough, *Race & Democracy: The Civil Rights Struggle in Louisiana, 1915–1972* 156–163 (1999).

20. GARROW, *supra* note 1, at 78.

21. *Id.* at 94–95, 96–97, 99, 101.

22. FRED D. GRAY, *BUS RIDE TO JUSTICE* 50–52 (rev. ed., 2013).

with, which is one of the reasons Jo Ann Robinson suggested in our conference—and this is before any of the other details took place—that while I agreed with her that Dr. King should be the spokesman, we have to give these other two men strong supporting roles. And the roles were this: One, E. D. Nixon—and you mentioned it earlier—was a Pullman car porter and A. Philip Randolph was his president of his union, if we make him treasurer, and if we are going to have a boycott over a period of time, A. Philip Randolph will be able to raise money, so have E. D. Nixon, who normally would have been the spokesman, to be the treasurer. What we going to do with Rufus Lewis? Well, Rufus Lewis was only concerned with one aspect, and that was voter registration. And getting people committed and performing once they got in office, and they had an organization that was named the Citizens' Club, and you had to be a registered voter to be there—not much you can do with that. However, his wife, Jewel, was co-owner of the largest funeral home in town, and guess what? They have automobiles. They can use automobiles to help keep the people and get them to where they go and get other funeral homes to do the same. Let's make him chairman of the transportation committee. So now, you have Dr. King as the spokesman, E. D. Nixon as the treasurer, Rufus Lewis as chairman of the transportation committee, and the only thing left is what? A lawyer.

(Laughter.)

MR. GRAY: And when Jo Ann and I saw the people were off of the bus and all of what you talked about, those leaflets, all of those plans were made, and people who think the bus boycott just started are wrong. We planned it all in her living room, and I set it out in "Bus Ride to Justice," and it has been there since 1995 for folks who want to read it, and I redid it in 2013.²³

PROFESSOR GARROW: And we should mention, too, your friend—I never met him—your friend who owned the pharmacy next door to your office.

MR. GRAY: Yes. Dr. Richard Harris.²⁴

PROFESSOR GARROW: Yes, yes. It is wonderful for folks, I think, to realize just how richly detailed and richly human and richly planned this was as such a wonderful community-wide achievement. Thank you.

(Discussion concluded.)

23. *Id.*

24. *Id.* at 83–85.