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Session III: A Conversation About Fred Gray: Rosa Parks' Lawyer and Dr. King's First Lawyer

Darlene Clark Hine
Northwestern University

Jonathan L. Entin
Case Western Reserve University

Leonard Rubinowitz
Northwestern University Pritzker School of Law

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**NORTHWESTERN LAW JOURNAL OF LAW AND SOCIAL POLICY
EIGHTH ANNUAL SYMPOSIUM**

**MARTIN LUTHER KING'S LAWYERS: FROM
MONTGOMERY TO THE MARCH ON
WASHINGTON TO MEMPHIS: A
SYMPOSIUM COMMEMORATING THE
CONTRIBUTIONS OF DR. MARTIN LUTHER
KING'S LAWYERS**

TRANSCRIPT OF PROCEEDINGS held at Northwestern University School of Law, Thorne Auditorium, 375 East Chicago Avenue, Chicago, Illinois, on the 31st day of October, A.D. 2014, at 10:45 a.m.

HOST: MR. LEN RUBINOWITZ, Professor and Faculty Advisor to the Journal of Law and Social Policy; MS. DARLENE CLARK HINE, Board of Trustees Professor of African American Studies; Professor of History, Northwestern University; MR. JONATHAN L. ENTIN, Associate Dean for Academic Affairs; David L. Brennan Professor of Law; Professor of Political Science, Case Western Reserve University.

REPORTED BY: PATRICIA ANN LAMBROS, C.S.R. No. 84-1790.

**SESSION III: A CONVERSATION ABOUT FRED GRAY: ROSA PARKS'S
LAWYER AND DR. KING'S FIRST LAWYER**

PROFESSOR RUBINOWITZ: Welcome to a conversation about Fred Gray. Fred Gray was Rosa Parks's lawyer, and Martin Luther King's first lawyer, a very important person to this whole story we're telling today.

So let me introduce the people who will be conversing. Fred Gray is very busy running a law firm, a law firm in Tuskegee, Alabama. And we have two scholars who know more about Fred Gray and his work than anyone else on the planet.

On my left is Professor Darlene Clark Hine, Board of Trustees Professor at Northwestern University. If you're not familiar with academic titles, Board of Trustees Professor is as good as it gets, although it gets a little better because last year, President Obama awarded her the National Humanities Medal.

To her left is our graduate, Professor and Associate Dean Jon Entin at Case Western Reserve Law School in Cleveland. It will become clear why Case Western is particularly relevant to this discussion. Professor Entin is a 1980 graduate of Northwestern Law School [sic].

So we're going to talk about Fred Gray for the next hour. Hopefully, there will be some time for some Q and A as we wrap up. We'll start with Professor Hine reading from

Fred Gray's autobiography called, "Bus Ride to Justice," first published in 1995, I think, and a new edition just recently published in 2014.

PROFESSOR HINE: Thank you. It's really a pleasure to be here and to have this robust conversation about a whole layer or cadre of black professionals: local lawyers who worked throughout the Civil Rights Movement, many of whom never received the attention, the acclaim, the applause, the thank you that they deserve.

I want to start briefly by sharing with you how I came to know Fred Gray. It was during the late '80s. And there was a program at the Smithsonian Institution. We were gathered to celebrate the Constitution.

And John Hope Franklin had arranged a special program of a panel. And I was a member of the panel. And we were focused on the role of black lawyers, black attorneys: the way they had affected the transformation, the challenges, the changes that were so necessary in the Constitution. And Fred Gray was the chair of the panel that I served on. And I spoke about Thurgood Marshall, Charles Hamilton Houston, and William Henry Hastie, and related some of their cases and essays and articles to the Constitution, Madison, and so on.

And after the panel, Fred Gray, who had introduced me, came up to me and said, "You did a good job talking about Hastie and Marshall and Houston, but you should have talked about me, too." And I said, "Well, I know them. I don't know who you are." And so, he said, "Well, we will have to correct that." And for the rest of that conference, Fred Gray was intent on letting me know who he was. And I became very intrigued.

So we decided—sometimes when I made decisions in conversations with Fred, I'm not sure that I was really making the decision, or that he was making the decision for me. He was just that good. But we decided that I would assist him in the preparation of his autobiography. I agreed to work with him on it because then I would cure myself of my ignorance of not knowing Fred Gray and the other black local lawyers across the South who had been so instrumental in moving and meeting the challenges of the segregationists to our great benefit.

Well, the strategy then was that I would accompany him or join him on a series of oral interviews of people who had been active and had worked with him in the Civil Rights Movement in Montgomery, Alabama. I would talk to his family. I would gather data.

But the real reason, I would come to find out, was that he really wanted me to talk to the white segregationists, two in particular. And I will talk about that a bit later. They were Attorney General Patterson and Governor George Wallace. So let me just set that up. That was my role.

But this is what I want to share with you from his autobiography, just two or three paragraphs.

"On one of the last days of my employment at the Advertiser Company, one of the white district managers asked me what I was going to do after graduation." He had just graduated from Alabama State. I told him I was going to law school. Another district manager asked me, 'Well, where are you going to practice law?' I said, 'Right across the street.' There was a long silence. The Montgomery County Courthouse at that time was located across the street from the Advertiser Company."

And then, he writes, “Privately, I pledged that I would return to Montgomery and use the law to destroy everything segregated that I could find. I kept my plans secret. I did not want anything to interfere with my going to law school. I completed the application without any discussion with family members. After I was admitted to Western Reserve University Law School, I showed Mother my acceptance letter. She said, ‘All right, Mr. Smartie. Now that you have been admitted, where are you going to get the money from?’ Of course, I didn't have the money, and she didn't have the money, but it was a rhetorical question because immediately, she went to work and borrowed money to help me go to law school.”

So he arrives at Western Reserve—this is the last paragraph. “I developed a systematic approach to studying and working. Immediately after class, one of the other African American students and I would stop by the dining facility and have lunch. I would return to the house in the afternoon, review and type up my notes. I would ascertain for each point of law that we covered whether Alabama followed or departed from the same principle. If it differed, I found out what the Alabama rule was and committed it to memory. Then I would prepare for my next day's classes. As further preparation for returning to Alabama, whenever we had legal research papers, I would always do my paper on some facet of Alabama law. I was determined to return to Alabama and destroy everything segregated I could find.”

PROFESSOR RUBINOWITZ: Professor Entin, how did you encounter Fred Gray?

PROFESSOR ENTIN: Well, I actually had heard Fred Gray's name just from having read, “Stride toward Freedom,” Martin Luther King's first book.

But it was only shortly after I joined the faculty at what now is called Case Western Reserve University that I discovered that he was a graduate. And he has a lot of Cleveland ties. His brother lived and worked in Cleveland for many years, and his best friend from high school was in Cleveland, so Fred would come to town periodically. And it turned out that during my first year on the faculty, that he had been elected president of the National Bar Association. It turned out that we had another alum who was simultaneously serving as president of the American Bar Association.

And so, at some point when he was at school, I got to meet him. And because I teach constitutional law, civil rights, and things like that, I have been teaching a lot of things that Fred has been involved in. And so, I've known Fred for at least 25 years.

And I saw most recently—this is one of the reasons he can't be here today—I saw him most recently two weeks ago at his 60th law school reunion. But he has been on the road so much. And as Len says, he's still practicing. He's 83 years old. And he's working harder than most of us are working. He just can't get away. But as I said, we've been in touch a lot over the years.

PROFESSOR RUBINOWITZ: Just in case you wondered whether that was hype when I said these two are the ones who know about Fred Gray the most of anybody on the planet, they do.

So let's talk about Rosa Parks and how he got involved with Rosa Parks and civil rights law when he went back to Alabama to destroy everything segregated that he could find.

PROFESSOR ENTIN: Let me just say that Fred was determined to go back to Alabama. But, you know, he was a thoughtful guy. He actually stopped off in Columbus on his way back to Alabama and passed the Ohio Bar exam in case things didn't work out at home.

PROFESSOR HINE: That's a good point.

PROFESSOR ENTIN: But when he returned home, he got to know Rosa Parks. They had lunch several times a week. They talked a great deal. And, you know, he was just about the only African American lawyer in Montgomery at that point. There were only a handful of African American lawyers in the entire state. And so, he had lots of time. He and Rosa Parks talked a great deal.

PROFESSOR HINE: Well, he didn't have any clients, you know.

PROFESSOR ENTIN: That's right. That's right.

PROFESSOR HINE: So he was still trying to establish himself. His wife, Bernice, you know, they had to work to get some furniture for the office. There was nothing in there.

But Rosa Parks would bring her lunch by. And the two of them would talk. And this went on for about several months, if not a year, before the actual resistance to relinquish her seat occurred on the Montgomery Bus Boycott.

Now, I never probed Fred about what those conversations were about, but I assumed—and he never really elaborated—that they talked about the segregation in Alabama and in Montgomery and across the state. And I think that she was also very concerned about the mistreatment that black people were suffering.

And I think over a year, a kind of consciousness melding occurred between the lawyer and this really kind and gracious woman.

PROFESSOR ENTIN: Right, right. And I mean he has said that that is, in fact, what they talked about, it may not have been all that they talked about, but they spent a lot of time talking about segregation and what might be done.

In fact, Rosa Parks is the celebrated person whose arrest led to the Montgomery Bus Boycott, but if you talk to Fred, he will always emphasize the case of Claudette Colvin, who was a 15-year-old African American young woman who was arrested on the bus several months before Rosa Parks was arrested. And for a variety of reasons, it was decided that her situation was not necessarily the best test case to press forward.

But Fred has said he and Rosa Parks talked a lot about Claudette Colvin. And this may be jumping a little bit ahead, but Fred filed the lawsuit called Browder against Gayle. And there were five named plaintiffs. Claudette Colvin was one of those.

PROFESSOR HINE: So he was also talking to a number of other women in the community as well.

But he had come to know the community because he was the newspaper boy. That's how he described it. He was the newspaper boy. Through college at Alabama State, he was still delivering newspapers. He was working since he was about three years

old, let him tell it, because he had to make money. He's 83, and he's still working, so he's a hard-working black man.

PROFESSOR ENTIN: Right. And, in fact, he talks about how he was on the bus five or six times a day when he was working for the Montgomery Advertiser, the newspaper that was across the street from the courthouse.

He knew what was going on in the buses. His experience in the buses wasn't necessarily as bad as some other folks, but he knew what was going on.

And so, when he had these conversations with Rosa Parks about what was happening, these were not abstract discussions at all.

It's worth noting, by the way, that Fred did not start out wanting to be a lawyer. He originally thought he was going to be a minister, and, in fact, had gone to the Nashville Christian Institute. And he was I guess the protégé, the star, young student head of the Institute.

He went around the country, preaching. And, in fact—and this will become relevant later on—while he was struggling to establish his law practice, he also was the minister of a local predominantly black congregation.

So that although that may not have been the most remunerative position, it at least gave him some cash flow because he had almost no cash flow as a lawyer when he was getting started, even though he went around, making himself known and doing the sorts of things that you have to do to get started.

PROFESSOR HINE: And later on, the fact that he was a minister would perhaps save his life because once the opposition really focused in on who was creating so much difficulty for them, they tried to revoke his exemption from the military.

PROFESSOR ENTIN: I think we're going to talk a little more in detail about some of the repercussions that he faced. And that clearly was probably the most significant.

PROFESSOR RUBINOWITZ: Let's talk about the obstacles. You got him started.

PROFESSOR ENTIN: Okay.

PROFESSOR RUBINOWITZ: But then, he ran into all kinds of things, and that can come back to Attorney General Patterson, to Governor Wallace, and the draft, all sorts of things.

PROFESSOR ENTIN: Okay. Well, let's start with how he got to Cleveland because Fred Gray was born and raised in Montgomery. He decided while he was in college at Alabama State that he did, in fact, want to become a lawyer. And as Darlene says, he had made this secret pledge to destroy everything segregated he could find.

Fred and I have talked about this because he graduated from college in 1951, at which point, the Supreme Court had decided Sweatt against Painter and some other cases along the way that suggested that if he had wanted to go to law school at the University of Alabama, he had a pretty easy lawsuit, although it would have required a lawsuit.

And I've asked him, "Well, why didn't you just do that?" And I think we'll hear from Judge Ward later on about who actually did try to litigate.

And Fred said, made no bones about it. He said, "I'm sure I could have won a lawsuit, but I am also confident that if I had been admitted pursuant to a court order, either the authorities would have found some pretext to throw me out of school, or if they couldn't have done that, they would have found some way to prevent me from passing the Bar, which would have frustrated my ability to fulfill this secret pledge I had made."

So he started looking around for other places that he could go. And it turns out that Reserve is in Cleveland. And there were good ties there. First of all, his brother was working in Cleveland; second, there were a lot of African Americans from Alabama who had made the migration to Cleveland. And so, he thought that was a place that was worth looking.

And then, it also turned out that as Darlene read the passage, he didn't have the money. And even when his mother went to work, they didn't have enough money to pay his expenses.

Alabama was willing to reimburse him for some of his expenses under a system that was analogous to what the Supreme Court had some years, even earlier than Sweatt, said in *Gaines vs. Canada*, that that was unconstitutional.

Again, Fred's position was, I don't want to litigate. I want to be a lawyer. I don't want to have to hassle with these things. But it turned out that because of the way the law school's class schedule worked, he was able to block his classes together, and then work part time on the side to make enough additional money to pay the bills.

He even tells a story about how he couldn't get his first semester grades because he hadn't quite paid all the bills. And apparently, he went home from the registrar's office having been told you can't get your grades until you pay this balance.

And it turned out that the fraternity he had joined at Alabama State had given him a scholarship, and the check had arrived in that day's mail, so that's how he basically spent the three years, scrambling to pay the bills.

But he did have some support at the school, although a lot of the support was of the sort, "Good luck with all this, but you have to be really out of your mind if you think that you're going to be able to make this work."

PROFESSOR RUBINOWITZ: Let's get him back to Alabama.

PROFESSOR ENTIN: Okay. So he takes the Bar in Columbus. He goes home. And even after taking the Bar, there is still a process whereby he has to be vouched for by a number of members of the Bar who have known him for at least five years. That was the requirement. And that was something of a scramble because there were not even five black lawyers in Alabama at the time.

But he was able to talk with Arthur Shores who was from Birmingham and was kind of the dean of the Black Bar in Alabama. And Mr. Shores did know him for a while. And with some effort, he was eventually introduced to Clifford Durr, who was I guess the brother-in-law of Justice Black. And Clifford Durr turned out ultimately to be one of the people who vouched for him.

And his wife, or she was his fiancée at the time, but Bernice was working for another white lawyer who was willing to do this. So with a little bit of perseverance, he was able to jump through that hoop as well.

PROFESSOR HINE: It was as if no obstacle was going to be too much for him to overcome. The most determined, steadfast individual you're ever likely to encounter. And he didn't whine about these things.

PROFESSOR ENTIN: Right.

PROFESSOR HINE: He always just thought about them and decided how best to obliterate that obstacle. And that was his mantra.

PROFESSOR RUBINOWITZ: Say something about Clifford Durr because you know who that was.

PROFESSOR HINE: Well, he really admired Clifford Durr. And Clifford Durr supported him behind the scenes as well as publicly.

PROFESSOR RUBINOWITZ: Clifford Durr was white.

PROFESSOR HINE: And he was one of the white attorneys.

PROFESSOR ENTIN: And Clifford Durr also had been a New Deal lawyer. He was close to President Roosevelt. He was a member I think of the Federal Communications Commission who resigned in protest of President Truman's Loyalty-Security program. And he went back to Alabama.

PROFESSOR HINE: Well, he was helpful in the Montgomery Bus Boycott suit. But Clifford Durr was also very helpful to him when he was fighting against redistricting when he was trying to get various people out of jail for being very active. His wife was very supportive of the Bus Boycott.

But they didn't call it boycott. It was protest. That was something that I don't know if it was Clifford Durr that taught him this finer point of Alabama jurisprudence, that if you call something a boycott, you're violating Alabama law, but if you called it a protest, then there was no law to be violated, so to speak. And he had to learn those kinds of little things. And Clifford Durr was often there to help him out.

PROFESSOR RUBINOWITZ: And always behind the scenes—

PROFESSOR HINE: Always behind the scenes.

PROFESSOR RUBINOWITZ: —his wife actually wrote a book called, “Outside the Magic Circle” because they had been part of the inner social circle in Montgomery until some of these things started to happen.

So let's talk more about some of those obstacles that he ran into, including your interviews with Attorney General Patterson and Governor Wallace.

PROFESSOR HINE: Well, for about two years, I was going back and forth to Alabama, looking through his records, interviewing people, having these really long conversations about his career, trying to get at his interiority, if you will, you know, which is one of those feminine concepts that he didn't have too much trust for, but nevertheless, he would tell me some of the obstacles that he encountered.

Well, what he really wanted from me, as I came to know him better, he wanted me to interview the white guys, the loyal opposition, those who were most determined to destroy him and to stop him, and to find out what they thought about him in retrospect, so this is a retrospective kind of process that I'm going through at the moment.

One of the people he wanted me to interview was Attorney General Patterson. Now, during the struggle, Patterson and Gray had been on opposite sides. And they were arch-enemies, or so they played out that they were arch-enemies.

But by the time I was being taken to interview Patterson, they were very cordial. They seemed to be on good terms. He walks into the office. And the Attorney General is, "Oh, hi, Fred. How are you doing?" And Fred—you know, I mean it was too much good ole boy kind of stuff going on. And he introduces me. And then, Fred Gray leaves the room.

That was not part of the plan. And the minute he left the room, it was just as if a Mr. Hyde and Dr. Jekyll kind of transformation. And Attorney General Patterson looked at me with the most steely blue eyes that I had ever seen. And he began to blast Fred Gray. He started with, "We could have won this. I had this won. We could have won this struggle." And I was like, "Win what?" You know, he was sounding like he was talking about the Civil War, that they were fighting it over again. He said, "That Fred Gray." And I said, "What about Fred Gray?"

And he said, "If it hadn't been for him, we could have won it. We could have won it. But Fred Gray kept getting those people out of jail." And then, he just went into a rant about how obstructionist Fred Gray had been as a lawyer, and if they could have gotten rid of him, then they could have won this like they could have won the Civil Rights Movement.

My blood froze. I had never experienced such rage and such anger. I mean I sat through this for 30 minutes, trying to reason with this man. Fred Gray walks in, "Oh, hi, Fred. How are you?" We walk out the door. And I say, "Fred, you were not supposed to leave. Why did you leave?" He said, "Oh, I thought you could have a more open conversation if I stepped out of the room." I said, "Fred Gray, if you do that again, I will walk back to Michigan."

Listen, we were on our way to see Governor George Wallace. We walk into his office. And Governor Wallace: "Oh, Fred, so great to see you." He introduces me. She's a John Hannah professor. Governor Wallace knew who John Hannah was. "Oh, a historian. Oh, I love to talk to historians." And Fred—oh, governor, so happy. And I look at him. He goes to the other side of the room. He does not walk out that door. And I'm happy.

George Wallace begins to rewrite almost a hundred years of history. And he comes down to, "Black people are some of my best friends. I love black people. All you historians have gotten me wrong. You misunderstand me. I never was a segregationist."

I said, “But you stood in front of the door of the school. You said, ‘Segregation now. Segregation forever.’ Why did you say these things?” And he said, “White people made me say them. I wanted to be elected governor. I had to say those things, but I didn't mean them. And Fred vouched for me.” “Yes, Governor. You're a good man.”

In his book, he has a section where he blasts Attorney General Patterson, but he also says that Governor Wallace was perhaps not as racist. And even when he was, it was good because he challenged him. And so, it was like the opposite kind of influence. You challenge me because you are so wrong. And he writes about that in his book. He wanted me to interview several more prominent white people, but by that time, I thought I should go back to Michigan.

So I returned. I gave him all my notes, all my documents, all the records, and a nice outline of what I thought about what he had experienced. And we agreed that I would not talk about him and this project until, this is what, years later, and I'm invited to sit in and comment on Fred Gray, who really does deserve closer scholarly attention for his role in the Civil Rights Movement, especially in Alabama, but the repercussions were important nationally.

PROFESSOR RUBINOWITZ: A footnote here, Fred Gray does acknowledge Professor Hine in the book. And she wrote the foreword to the first edition of the book. She didn't mention some of these things she has just been talking about in that foreword.

Let's stay with the obstacles for a while because there really was a great effort to drive him out of the picture, a feeling that if they could drive him out, the organization would be without a lawyer, there wouldn't be any other lawyer who would be part of it, and that that would perhaps derail the movement entirely or at least have a very major significant impact, so they came up with a lot of creative things. And let's talk about some of them.

PROFESSOR ENTIN: Okay. Well, some of the things are the sorts of things you might expect, I mean threats, harassment. The Grays' home was never bombed as Dr. King's was, but there were plenty of those sorts of threats and harassment.

The three main efforts that could have been made, one, Darlene mentioned earlier on. You know, Fred had a ministerial deferment from the draft. And it's worth noting that Fred graduated from law school and was admitted to the Bar before his 24th birthday, and so, he was still eligible for the draft when Rosa Parks was arrested and the litigation ensued.

So his Draft Board revoked the deferment and reclassified him and was getting ready to send him for induction. And Fred had to pursue that matter all the way to the top of the Selective Service system. The national director of the Selective Service ultimately ruled that he was, in fact, entitled to the ministerial deferment. And so, he was able to avoid that problem.

There are two others that are—

PROFESSOR RUBINOWITZ: Before you leave that, I think it was the day before his induction.

PROFESSOR HINE: Yes, the day before.

PROFESSOR ENTIN: That's right. I mean, you know, he had gotten an induction order, and he was supposed to report. And he was pursuing this, but this was cut as close as it could have been cut.

Two other things: Fred filed the lawsuit in Browder against Gayle and did most of the early work. In that regard and in many others, he worked with lots of other lawyers, not just Clifford Durr and Arthur Shores, but he had developed good working relationships with Robert Carter and Thurgood Marshall. And so, in many ways, he looks like the local counsel, but in fact, he's doing a lot of the heavy lifting.

Now, I mentioned that Browder was filed while Rosa Parks's appeal from her conviction was pending. And for strategic reasons, he didn't want Rosa Parks as a party to the federal lawsuit, so—

PROFESSOR RUBINOWITZ: Let me just interrupt. The federal lawsuit he is talking about is the challenge, the constitutional challenge, to the segregation laws on buses.

PROFESSOR ENTIN: Right. And one reason why they thought they needed to pursue that litigation was because Rosa Parks was actually not charged for violating the Montgomery bus segregation ordinance. She was charged with disorderly conduct.

And the defense was that to the extent that she had engaged in anything that led to her arrest, it was because she was protesting the segregation that was required by the ordinance, so it got to be complicated to assert the constitutional claim in her case. So the idea was let's have a lawsuit that explicitly puts the constitutional claim on the table. So Rosa Parks could not be part of the federal suit lest the suit be dismissed on the basis that it was trying to circumvent the state appeal.

There are five, the five plaintiffs, one of whom is Claudette Colvin we mentioned earlier. And at one point, the local grand jury indicted Fred I think for barratry, which means that he was stirring up litigation. And the claim was that one of the named plaintiffs, a woman named Jeanette Reese, supposedly had had her name included without her consent.

In fact, Fred had meticulously documented that she was a completely willing, voluntary plaintiff in the case. And if the case had gotten that far, he would have had a very powerful defense on the merits. It turns out that the case was dismissed because the charge was that he had filed a lawsuit in the Federal District Court in the name of somebody who was not, in fact, a willing plaintiff.

Well, the state doesn't have jurisdiction over the federal courthouse, which is where the offense supposedly took place, and so, the case wound up getting dismissed, but this is some indication about just sort of how far people were prepared to go.

By the way, there is a footnote sort of to the Rosa Parks case. There was another effort to get at Fred, which he didn't discover for another 55 years until he had become the first African American to be the president of the Alabama State Bar Association. And just looking in the files from that period, he discovered that there had been a complaint filed against him by the head of the Grievance Committee of the Alabama State Bar, claiming that he had improperly posted an appearance bond on behalf of Rosa Parks in connection with her arrest. In fact, he had co-signed an appeal bond.

This claim went nowhere, although to give you some indication about how this came or how seriously people were trying to get at him, the person who filed the complaint was a man named Albert Brewer, who eventually became George Wallace's lieutenant governor and later served in his own right as governor.

As I said, Fred never knew about this for another 55 years. And even knowing that, he wound up eventually appointing Albert Brewer to be co-chair of a task force during the time that Fred was the president of the State Bar.

PROFESSOR HINE: You sort of have to keep your friends close.

PROFESSOR ENTIN: Right.

PROFESSOR HINE: And your enemies even closer.

PROFESSOR ENTIN: Right.

PROFESSOR HINE: But that was one thing that I detected in all my conversations with Fred that he was so wary in the sense that he thought people were out to get him, and to create all kinds of diversions, if you will.

And one of the things that he was very, very careful about was not to be seen as someone who was coaching and cultivating resisters, if you will. I mean he just couldn't have anyone think for a moment that he was coaching, you know, Rosa Parks or coaching anybody.

And so, one of the strategies that he used was to always invite co-counsels, always invite some other black people, attorneys, or white attorneys, if they were willing, and never to really put his name up front.

And that was kind of a difficult thing to do when you do have an ego as a professional, but if claiming the credit is going to justify the outcome or bring more suspicion to what it is that you're doing, then you're going to learn how to dissemble, if you will, and he did.

PROFESSOR RUBINOWITZ: Let me raise a question that follows up on some of the discussion earlier today. How did Fred Gray perceive himself as a lawyer?

PROFESSOR HINE: That's one of the things we talked about a lot. What kind of a lawyer are you? How this being a lawyer does combine with your being a minister, combine with all the other things, a businessman, you know.

And he would speak of the law as if it was akin to the Bible. Like the Bible has to be interpreted and discussed, you know, and there is some absolutes, there is some absolutes in law.

And one of the absolutes was that African Americans are entitled to every constitutional right delineated in the Constitution that white people have, and that all of us should have a right to counsel, we should have a right to speak up in protest, we should have a right to defend ourselves.

And I think that whole suit with the NAACP for me was one of the best. When they were trying to get rid of the NAACP in Alabama, they said that the NAACP was a

foreign corporation, and that it had not filed and secured the right permissions and what have you that it was like the Communist Party. It was like Russia was invading Alabama. I mean that's the kind of rhetoric about the NAACP.

And Fred was determined to defend the right of the NAACP to exist in Alabama and not have to reveal the names, addresses, and personal information of all the members of the NAACP.

And I think that was one of those battles that you saw him at his tenacious best. He was determined. And it took years. And eventually, they threw it out of court, or they decided that the NAACP could operate in Alabama.

PROFESSOR ENTIN: This case, NAACP against Alabama, the original version was called NAACP against Alabama ex rel. Patterson because Patterson, at that point, was the Attorney General who was seeking the NAACP membership list.

The theory was that there were potential Communists or other subversive types in the membership, and so, this was sort of a service to the NAACP to help expose these disloyal folks. This is not actually formally a Martin Luther King case. That case wound up in the Supreme Court I think four times before the state backed off.

Fred was involved in a bunch of other cases. And just to give you some sense about this, as I said, he filed Browder against Gayle. He was one of the lawyers in the NAACP litigation.

When Commissioner Sullivan filed the lawsuit that became New York Times against Sullivan, he included four local black ministers to keep the case out of Federal Court. Fred was the first lawyer representing the black ministers at the trial. He argued Gomillion against Lightfoot, the Tuskegee gerrymandering case. I mean, look, this is four landmark cases in the Supreme Court. This is his first ten years out of law school. He has been involved in virtually every major civil rights case in Alabama since he graduated law school.

He also represented the victims of the Tuskegee syphilis experiment. I mean this is—

PROFESSOR HINE: This was a big deal.

PROFESSOR ENTIN: He's local, but he's a really major player in these things.

I think it's also worth noting—this goes back to the Rosa Parks conversations—you know, Fred was not really a reactive person waiting—I mean, yeah, he wanted to get clients as any lawyer would—but Fred's goal about destroying everything segregated he could find meant that he was looking to be proactive. There may be ethical and professional limits to some of the things you can do.

But, for example, after Rosa Parks was arrested and he was brought in to represent her in the case, then there was the plan for what was originally going to be a one-day protest of Rosa Parks's arrest. And there was a meeting to organize that protest.

Well, Fred was in that meeting with E.D. Nixon and Jo Ann Robinson. This was the meeting where it was decided that Martin Luther King was going to be the front person in effect for this. Dr. King wasn't at the meeting. You know, the old story, if you don't show up at a meeting, you might get elected to be the committee chair is kind of what happened here.

But Fred was involved in a lot of these discussions. And it wasn't so much that he was driving the show or something like that, but it was he had a sense that to make the litigation work, sometimes, you had to get a base of popular or community support so that this litigation could go forward. And remember, he is not getting paid in cases like this. And this is some indication about what brought him to these matters.

He also was somebody who was going to be living in Montgomery when the dust settled, and so, he had a sense, maybe not a unique sense, but he had a sense about how things would play out and what the consequences would be for real people that—and I don't mean this in any sense to be critical of people like Thurgood Marshall, but, you know, if you can go home a long way away, things look a little different to you when you're not on the ground.

And, you know, Fred Gray is important, not just for what he did in Alabama, but because he was one of those people on the ground. And there were people in Georgia—we're going to hear from Judge Ward later on—people in other places who also were in that position. And that meant that folks like Fred Gray got to think about their lawyering practice and their lawyering goals in some ways that, frankly, we don't teach very much or very effectively in law schools.

And, you know, for the students here, I think Fred Gray and some of these other lawyers can teach us all some important lessons about how to do good lawyering and make an impact.

PROFESSOR RUBINOWITZ: You had referred to him as a local lawyer working with local movements.

PROFESSOR HINE: Before it became the national Civil Rights Movement, it was one of these movements where Fred volunteered his services to help, in an incremental way, gain rights and recognition and access to institutions which should have been available and open to all citizens, from, you know, the schools, the right to vote, Tuskegee Institute should receive more equitable resources, distribution of all kinds of resources in these institutions.

And Fred sort of systematically worked with all of them in order to expand access while he was also trying to destroy the unjust laws, if you will. And that's sort of a Janus kind of position, you know. How do you fight for equal opportunity and access and your equal, fair share of tax money and so on and so forth when, at the same time, you're trying to destroy the laws that make it legal and possible to uphold this segregated, unjust, unfair system? How do you work inside and outside simultaneously and do that for 30 years or more?

And that was the big conundrum that I couldn't really come to understand and appreciate during all our conversations. It was a mystery. Do you have insight into that quandary?

PROFESSOR ENTIN: You know, he and I have never really talked about this in great depth, but he is one of those people, lawyers in general have to—if you're a really good lawyer, you have to be able—no matter what your personal commitments are, you have to be able to take a step back and ask yourself not only what am I trying to accomplish and what are my best arguments or what's my best strategy, but also, you have to be able

to take the step back and ask, “What’s the other side going to say, or what can go wrong?”

Really, really good lawyers know how to do that. And a lot of lawyers who aren’t so good at it, at that, turn out not to be such good lawyers on behalf of their clients after all. I don’t have an explanation, but I think Fred Gray is one of those people who had the passion to say, “The system that I grew up under is completely reprehensible, but I have to figure out how to destroy that system without trying to go off tilting at windmills. I want to be effective.”

And one of the reasons that I have developed this remarkable, long-term relationship with him is because he is one of those people who has that rare skill. I’m not sure where it comes from.

I can’t imagine—I mean with all respect to my long-ago predecessors on the faculty, it’s hard for me to believe that all the law schools somehow had figured out how to convey this sort of perspective or judgment or whatever you want to call it when nobody else seems to have been able to do that.

I think that’s something that he brought with him. It’s partly a function of his family. It’s partly a function of some of the places he had been along the way. And a lot of it is just some people have things that we can’t quite articulate. And there are only a few people like that out there. I don’t mean he’s the only one, but the people who have been really effective have been folks who could do that.

PROFESSOR RUBINOWITZ: I can’t help but insert an anecdote here. Jon referred to a case called *Gomillion*, *Gomillion vs. Lightfoot*.

The state legislature in Alabama, in its finite wisdom, decided to take the city of Tuskegee, which was a square, and redraw the boundary lines of Tuskegee into a 27-sided figure. By an absolute coincidence, their doing that made suburbanites of almost the entire black population of Tuskegee, that is, the whole idea was to remove the black population from the city.

Fred Gray sued on behalf of the black population of the city that had been removed from it. And he had this incredibly creative idea when he got to the Supreme Court. He had a large map, two large maps behind him, one which was a square Tuskegee, and the other was a 27-sided Tuskegee.

And the Justices, the nine Supreme Court Justices, every time they looked at him, they saw that map. And at one point, one of the Justices who knew the reputation of Tuskegee Institute, said, “Where is Tuskegee Institute?” And Fred Gray said, “It’s not in Tuskegee anymore.”

PROFESSOR ENTIN: It’s actually better than that.

PROFESSOR RUBINOWITZ: Even better than that, it turns out.

PROFESSOR ENTIN: Fred had had these maps created in hopes that he could use them in the District Court, but the case was dismissed on the pleadings.

He brought the maps with him for the purpose that Len suggested. And he was really, really nervous that Justice Frankfurter, who was a stickler for procedure and

jurisdiction, and Justice Frankfurter would say, “Counsel, is that in the record?” And the answer would be, “Well, not exactly.” And Frankfurter would give him a hard time.

Well, if you ever have the opportunity to listen to the recording of the oral argument, you will hear Fred sort of beginning his argument. And at some point, a minute or so into the argument, there is this high-pitched voice. It’s Justice Frankfurter.

And Fred tells the story about how like his heart stopped. And Justice Frankfurter said, “Counsel, where is Tuskegee Institute on this map?” And Fred walked over and showed him it wasn’t in the city. And at that point, Justice Frankfurter said something incredulous, like, “Tuskegee Institute is not in Tuskegee anymore?”

And that was kind of—well, let’s put it this way: Frankfurter wrote the opinion for a unanimous court.

PROFESSOR RUBINOWITZ: We can’t finish—I don’t know how much more time we have, but we can’t finish without talking about the perjury trial because it’s a little-known incident in Dr. King’s career, but it’s an incredibly important one.

So let’s talk about that. Jon, I think you—

PROFESSOR ENTIN: Okay. And we’ll probably hear more from Clarence Jones about this later on, but Dr. King left Montgomery and moved to Atlanta. In fact, apparently, because Fred Gray was his first lawyer, Dr. King wanted Fred to come with him to Atlanta. And Fred was reluctant to do that.

But after Dr. King had relocated to Georgia, the Alabama tax authorities decided that Dr. King had filed fraudulent tax returns for a couple of the years that he was in the state, and so, they charged him with perjury.

And they also made a very public announcement of the indictment. In cases like this, where you know who the lawyer representing the taxpayer is, they can work out sort of informal ways for the person to come back and appear without making a big splash, but this was clearly designed to discredit Dr. King and to make him out to be some kind of a knave or a charlatan or something like that.

And so, in April of 1960, which he came back, a team of lawyers was assembled—some of those lawyers, by the way, were from Chicago, like Robert Ming—but Fred was on that team as well.

I’ve never been entirely clear about precisely what his role was because as Darlene says, often, Fred would take a leading role but would actually sort of put himself for public purposes a little bit into the background.

But in any event, the team of lawyers brought in a couple of African American tax experts who just shredded the state’s case. Dr. King testified. Ming did the direct examination, and Dr. King was a terrific witness, both on direct and on cross.

And again, this part, I think Clarence Jones will talk about in more detail, but what’s striking about this, this is April of 1960. It’s an all-white jury in Alabama. It is around the time that Commissioner Sullivan and a number of other people have filed these massive lawsuits against the New York Times, trying to drive the national press out of Alabama.

The jury did not deliberate very long and came back—you know, by a unanimous verdict, they came back, after relatively brief deliberations, with an acquittal. And you

have to think about what this means. I mean this is Martin Luther King. He is like Public Enemy Number 1 as far as the segregationists are concerned. They can't persuade a single juror that there is any substance to this claim.

It's pretty clear that if they had gotten a conviction, that Dr. King would have been put under a huge cloud. It might well have been that eventually, they could have gotten the conviction overturned on appeal, but this is not a position you want to be in because, I mean if you just think about this, if they got the conviction overturned on appeal, the argument would be, well, he got off on some technicality or other, whatever the rationale would be.

So this was a crucial piece of Dr. King's career, obviously, not the only time even in 1960 that he was in difficulty. Later in the year, he was arrested in Georgia and sent off to a maximum security prison which led to the celebrated phone call from then-Senator John Kennedy to the governor of Georgia that it's said to have made a difference in the presidential election.

But were it not for the work that Fred Gray and Robert Ming and the other folks who worked on the perjury trial had done, we never would have gotten to that point because Dr. King would have been under this other enormous cloud.

PROFESSOR RUBINOWITZ: It's also a great example of what Professor Morris was talking about before, this morning, that is, the humiliation part of this. This was probably perhaps the most humiliating experience of Dr. King's life, to be accused of being a criminal, being unethical, cheating the State of Alabama on his taxes.

There has been lots of speculation about why this all-white jury acquitted. Part of it clearly is smashing the case, but the quip about it is that those white folks on the jury hated taxes even more than they hated black people.

So let's wrap up. Final thoughts you each have about Fred Gray.

PROFESSOR HINE: In retrospect, I am absolutely convinced that Fred's contributions deserve much more appreciation and scrutiny and inclusion in the historical record than he has received at this juncture.

I think he's worthy of study for several reasons: first and foremost, his desire to make life better for everybody. Maybe that's the religious base that he operates from.

And then, secondly, the determination to use all of his physical, intellectual, and mental resources to acquire the training and the skills that not only will make a better life for himself and his family, but will change the course of history towards righteousness, you know, that arc.

And thirdly, in order to understand place, you know, just place, I think it helps to have a figure like Fred Gray who was born, bred, and raised in this space, this Alabama place.

And through his life, we can come to understand better, even if we don't like them, all of the individual perspectives that were involved in this movement and in the white resistance to the movement as well. And we often talk about black resistance, you know, but there was white resistance, too. And as civil rights scholars and students, we have to pay attention as Fred did to what the opposition was thinking at every stage in this process of social transformation.

Now, he may not have liked Governor Patterson, Attorney General Patterson, but he never dehumanized him. Attorney General Patterson tried to dehumanize black people. And Fred ultimately prevailed.

And so, I'd like that place approach where you study all of the different personalities and try to illuminate the difference that each made and to celebrate the hundreds of Fred Grays all across the South.

PROFESSOR ENTIN: I have maybe a narrower take on this. I often say I teach at Fred Gray's law school. That's probably the single statement that sort of captures why I found going into law teaching and legal scholarship to be a worthy way to spend my career.

He's only one person, but he's such an extraordinary person in every sense of the term. I've been fortunate to be able to have Fred talk to my classes. And I've always had this problem about how to introduce him without taking up the entire hour.

And I'm really sorry he couldn't be here because with all respect, we are barely scratching the surface of what a remarkable person he is. This is a guy who has been practicing law for 60 years. He has done mundane stuff. He has done path-breaking stuff. And he's done this, remember, it was made possible because the State of Alabama was willing to subsidize—in a peculiar way, to subsidize his legal education.

I've always wondered if, in the history of Alabama, there has been from the standpoint of sort of the old power structure, the segregationist establishment, could there have been a worse investment of public funds in the history of the state?

The other thing is this is a guy who I don't think he has ever had as many as eight lawyers in his office. And most of the time, it's been a lot fewer. And I say this to students, right? I mean I worked in a big firm. I had a good experience. I'm not a refugee from practice.

But I think people like Fred Gray, the lesson for students is not only can you learn how to be a lawyer by watching what he did, you can learn how to be an amazingly good lawyer, following your own goals and your own judgment, and being able to keep your eye on why you came into law school in the first place. There are lots of reasons to do that.

And it's people like Fred Gray I think who can give you some reassurance that this is more than just being a hired gun.

PROFESSOR RUBINOWITZ: With that thought, we'll wrap it up and thank the two of them for the conversation.

(Applause.)

PROFESSOR RUBINOWITZ: Jon is right as always that we just scratched the surface, but we're going to kick the two of them off the stage.

(Short pause.)