

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. Colvin, next friend, and
MARY LOUISE SMITH, by Frank Smith,
next friend, and others similarly
situated,

Plaintiffs

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147-N

VS.

W. A. GAYLE; CLYDE SELLERS and
FRANK PARKS, individually and as
members of the Board of Com-
missioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
A corporation, and JAMES P. BLAKE;
and ROBERT CLEERE,

Defendants

FILED
FEB 1 1956
G. D. Street, Jr.
Clerk
By _____
Deputy Clerk

COMPLAINT

I. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, this being a civil action arising under the Constitution and laws of the United States wherein the matter in controversy exceeds the sum of three thousand dollars exclusive of interest and costs.

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 1343 (3). This action is authorized under Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States, or other person within the jurisdiction thereof, to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, Section 1, and by Title 42 of the United States Code, Section 1981, providing for the equal rights of citizens and of all other persons within the jurisdiction of the United States; and of Title 42, United States Code, Section 1985, since this involves a conspiracy to interfere with the civil and constitutional rights of citizens of the United States.

(c) The jurisdiction of the Court is also invoked under Title 28, United States Code, Section 2281. This is also an action for an interlocutory and

permanent injunctions, to restrain the enforcement of the provisions of Title 48, Section 301 (31a, 31b, 31c), Code of Alabama, 1940, as amended upon the grounds of unconstitutionality. Pertinent provisions of said statutes are attached hereto, marked Exhibit "A", and made a part of this complaint.

2. This is also a proceeding for declaratory judgment under Title 28, United States Code, Sections 2201 and 2202, to declare the rights and legal relationships of the parties in the matter in controversy, to wit:

(a) Whether the enforcement, execution or operation of Title 48, Section 301 (31a, 31b, 31c), Code of Alabama, 1940, as amended, which requires the segregation of Plaintiffs and other Negro citizens, solely because of race and color on motor vehicle carriers for hire operating within the City of Montgomery and the State of Alabama, deny to them their rights, privileges and immunities as citizens of the United States, and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and rights and privileges secured to them by Title 42, United States Code, Section 1981 and 1983, and whether said enforcement, execution and operation of said statutes are for the aforesaid reasons unconstitutional and void.

(b) Whether the enforcement, execution or operation of Sections 10 and 11 of Chapter 6, Code of the City of Montgomery, Alabama, 1952, pertinent provisions of said ordinance are attached hereto, marked Exhibit "B" and made a part of this complaint, which requires the segregation of Plaintiffs, and other Negro Citizens, solely because of their race and color on motor vehicle carriers for hire operating within the City of Montgomery and the State of Alabama deny to them their rights, privileges and immunities as citizens of the United States, and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and rights and privileges secured to them by Title 42, United States Code, Sections 1981 and 1983, and whether said enforcement, execution and operation of said ordinances are for the aforesaid reasons unconstitutional and void.

(c) Whether the acts and conduct of the Defendants, acting under color of law and seeking to compel the Plaintiffs and other Negro Citizens by threats, force, violence, intimidation, or harassment to use the transportation facilities provided by the Defendant, Montgomery City Lines, Inc., subject to the requirements of the state statutes and city ordinances mentioned aforesaid, have deprived the Plaintiffs and other Negro Citizens of their rights as secured by the Fourteenth Amendment to the United States Constitution and by Title 42, Sections 1981 and 1983 of the United States Code.

(d) Whether the Defendants violated the Plaintiffs' and other Negro Citizens' rights as secured by the Fourteenth Amendment to the United States Constitution in conspiring among themselves and others to prevent Plaintiffs and other Negro Citizens from refusing to use the bus facilities provided by the Defendant, Montgomery City Lines, Inc., and in seeking to compel the Plaintiffs and other Negro Citizen to use said facilities by force, threats, violence, intimidation and/or harassment constitutes a violation of their rights secured by the Fourteenth Amendment to the Constitution of the United States in violation of Title 42, United States Code, Section 1985.

3. Plaintiffs bring this action pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure for themselves and on behalf of all other Negro Citizens situated, whose numbers make it impracticable to bring them all before this Court; they seek common relief based upon common questions of law and fact.

4. Each Plaintiff is a Negro and a citizen of the United States and of the State of Alabama. Each is a resident of the City of Montgomery, Montgomery County, Alabama, and each uses the public transportation system of the City of Montgomery and intends to use it in the future. The Plaintiff, Claudette Colvin, is a minor over the age of sixteen years and this action is brought on her behalf by W. P. Colvin, her father as next friend. Mary Louise Smith is a minor over the age of eighteen years and this action is brought on her behalf by Frank Smith, her father as next friend.

5. The Defendants, W. A. Gayle, Mayor of the City of Montgomery, Alabama; Clyde Sellers and Frank Parks are residents of Montgomery County, Alabama, and are all members of the Board of Commissioners of said City of Montgomery. The Defendant, Goodwyn J. Ruppenthal, is a resident of Montgomery County, Alabama, and is Chief of Police of said City of Montgomery, Alabama. This action is brought against the Defendants named above in this paragraph both as individuals and in their official capacities. The Defendant, Montgomery City Lines, Inc., is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in the said City of Montgomery, and is engaged in operating, within the corporate limits and police jurisdiction thereof of said City of Montgomery, a bus line for the transportation of passengers for hire, pursuant to an exclusive franchise issued by said City of Montgomery.

6. The Defendant, Montgomery City Lines Inc., acting under color of and in purported compliance with the statutes and ordinances herein above set out, said Montgomery City Lines has operated said busses on the basis of racial segregation, in violation of the rights guaranteed to Plaintiffs and other Negro Citizens under the Constitution and laws of the United States.

Defendants, Robert W. Cleere and James E. Blake are employees and drivers of buses owned and operated by the Defendant, Montgomery City Lines, Inc., acting pursuant to orders from said company, seek to enforce rules and regulations requiring the segregation of Negroes on said buses in violation of their rights under the Constitution and laws of the United States.

7. Defendants, W. A. Gayle, Clyde Sellers and Frank Parks seek to enforce the aforesaid statutes and ordinances and are seeking and conspiring among themselves and with others to compel and require the Plaintiffs, and all other Negro citizens of the City of Montgomery, to comply with the provisions of the aforesaid unconstitutional statutes and ordinances; and pursuant to their orders, the Plaintiffs and other Negro citizens who fail to observe these statutes and ordinances and who refuse to use the facilities of the Defendant, Montgomery City Lines, Inc., because of such statutes and ordinances are subject to arrest.

and confinement in jail.

Defendant, Goodwyn J. Ruppenthal, Chief of Police of Said City of Montgomery, Alabama, seeks and conspires with others under color of law to compel obedience to the unconstitutional statutes and ordinances aforesaid with respect to the segregation of Plaintiffs and other Negro Citizens as passengers on the Montgomery City Lines, Inc., and has actually caused to be arrested and/or caused to be arrested and confined to jail, and/or fined and/or otherwise punished a number of Negro citizens solely because of their insistence under the Constitution and Law of the United States, that they are entitled to use the facilities of Montgomery City Lines without being segregated thereon; to wit: the Plaintiff, Claudette Colvin, the said Claudette Colvin having been arrested on or about March 2, 1955, and sentenced in the Juvenile Court of Montgomery County, Alabama, and placed on probation, which sentence was sustained on appeal, by the Circuit Court of Montgomery County, Alabama, in Equity; the Plaintiff, Mary Louise Smith, the said Mary Louise Smith having been arrested on or about October 21, 1955, and convicted and fined \$9.00 in the Recorder's Court of the City of Montgomery; and Rosa Parks, the said Rosa Parks having been arrested on or about December 1, 1955 and convicted and fined \$14.00 in the Recorder's Court of the City of Montgomery.

8. Because of the illegal and unconstitutional acts and the threats of the Defendants as aforesaid, and the resulting fear of arrest, embarrassment, humiliation and violence to their persons, Plaintiffs, along with most other Negro citizens of the City of Montgomery, have since December 5, 1955, and up to the present time, refrained from making use of the transportation facilities provided by said Montgomery City Lines, Inc., as aforesaid. However, Plaintiffs have suffered and continue to suffer great loss and inconvenience as the result of the denial to them of their rights to use said facilities on an unsegregated basis without fear or intimidation.

9. Since December 5, 1955, the Negro citizens of Montgomery, in order to alleviate the transportation situation above described and to aid each other in meeting their transportation needs in going to and from their jobs and otherwise carrying on their business, social and personal activities, have organized voluntary car pools, operated without charge, and have made use of taxicabs operated by Negroes. However, the Defendants, Gayle, Sellers and Parks are now seeking by threats and intimidation to deprive Plaintiffs and other Negro citizens of the use and benefit of said car pools and taxis and of other privately provided transportation facilities and thereby to force them to resume the use of busses on a segregated basis. To this end

said Defendants, using their prestige as City Officials, have publicly called upon and urged white employers of Negroes who are now providing them with transportation to and from their work, to cease, doing so; the said Defendants have also, as part of their plan of intimidation publicly announced their affiliation, as members, with an organization known as "Central Alabama White Citizens Council" or some similar name, which organization is publicly dedicated to the maintenance of segregation in public schools, parks, transportation facilities and other public places and to depriving Negro citizens of their rights under Section 1 of the Fourteenth Amendment of the United States Constitution as interpreted by the United States Supreme Court and as part of their program of intimidation, said Defendants have also publicly announced to the Press and over the facilities of the Radio and Television stations their intention to harass persons providing transportation to Negroes by causing them to be stopped and questioned and their vehicles checked and examined in detail to determine whether or not such persons might be arrested and prosecuted for minor violations of laws and ordinances, which are not being enforced against white persons; and that said Defendants, in numerous instances, have already caused Negro drivers of taxicabs and Negro drivers of other conveyances to be stopped and questioned by the City Police as to such matters as: how long they have been hauling passengers, where they work, where they obtain their gasoline and to be otherwise harassed in various other ways. And Plaintiffs verily believe, and allege on information and belief, that one purpose of the aforesaid questioning by the Police has been to obtain information for the purpose of bringing pressure upon employers to discharge Negro employees who are providing transportation to fellow Negro citizens and otherwise subject them to economic reprisals.

10. Plaintiffs^{and other Negroes}/desire and intend to resume the use of the busses operated by the Defendant, Montgomery City Lines, Incorporated as soon as they can do so on a non-segregated basis without fear of arrest by the Defendants or their servants, agents or employees.

11. Plaintiffs and those similarly situated suffer and are threatened with irreparable injury by the reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress these wrongs other than by this suit for an injunction. Any other remedy sought would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits and cause further irreparable injury, damage and inconvenience to the Plaintiffs and those similarly situated.

WHEREFORE, Plaintiffs respectfully pray that:

1. The Court convene a Three-judge Court as provided by Title 28 of the United States Code, Section 2284.

2. The Court advance this cause on the docket and order a speedy hearing thereof according to law and that upon such hearing the Court enter a temporary injunction to enjoin and restrain the Defendants, and each of them, from enforcing Section 301 (31a, 31b, 31c) of Title 48 of the Code of Alabama of 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Montgomery City Code, 1952, and any and all customs, practices and usages, pursuant to which Plaintiffs or other persons similarly situated are segregated in the busses of the Montgomery City Lines, Incorporated, and restrain the Defendants from seeking to compel Plaintiffs and other Negro Citizens and from conspiring among themselves with others to compel the Plaintiffs and other Negro citizens by force, threats, violence, intimidations, or harassment to use facilities provided by the Montgomery City Lines on the ground that such statutes and/or ordinances are null and void and in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The Court upon a final hearing of this cause will:

(a) Enter a final judgment and decree that will declare and define the legal rights of the parties in relation to the subject matter of this controversy.

(b) Enter a final judgment and decree which will declare that Section 301 (31a, 31b, 31c) of Title 48, Code of Alabama 1940, as amended, and Section 10 and 11 of Chapter 6 Code of the City of Montgomery 1952 are unconstitutional and, therefore, null and void in that they deny and deprive the Plaintiffs and other Negro citizens similarly situated the equal protection of the laws secured by the Fourteenth Amendment to the United States Constitution and the rights and privileges secured to them by Section 1981 and 1983 of Title 42 United States Code.

(c) Enter a final judgment and decree declaring that the acts of the Defendants in seeking to compel the Plaintiffs and other Negro citizens similarly situated and in conspiring among themselves and with others to compel the Plaintiffs and other Negro citizens similarly situated, to use the bus facilities provided by the Defendant, Montgomery City Lines, Incorporated, and in seeking to enforce said unconstitutional statutes and ordinances are in violation to the Fourteenth Amendment to the United States Constitution and in violation of Title 42, Section 1985, of the United States Code.

(d) Enter a final judgement and decree enjoining the Defendants, their agents, servants or employees from enforcing the forestated statues and ordinances on the ground that they are unconstitutional and, therefore, null and void as forestated. That the Court issue temporary and permanent injunctions ordering the Defendants, and each of them, their servants, agents or employees from taking any acts to prevent or conspiring among themselves or/and with others to prevent, by force, threat, violence, harassment or intimidation, Plaintiffs and other Negro Citizens similarly situated from using privately provided transportation.

4. The Court allow Plaintiffs their costs and such other relief as may appear to the Court to be just.

Charles D. Langford

Paul D. Gray

Attorneys for Plaintiffs

113 Monroe Street
Montgomery, Alabama

EXHIBIT "A"

Title 48, Section 301 (31a) Code of Alabama, 1940, as amended. SEPARATE ACCOMMODATIONS FOR WHITE AND COLORED RACES.

All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and for such refusal neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, Appvd. July 6, 1945.)

Title 48, Section 301 (31b) Code of Alabama, 1940, as amended. OPERATORS OF PASSENGER STATIONS AND CARRIERS AUTHORIZED TO SEGREGATE WHITE AND COLORED RACES.

All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, Sec. 1, appvd. July 18, 1947.)

Title 48, Section 301 (31c) Code of Alabama, 1940, as amended. FAILURE TO COMPLY WITH RULES AND REGULATIONS AS TO SEGREGATION OF WHITE AND COLORED RACES.

It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulations, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles of any such motor transportation company or of any operator of vehicles carrying passengers for hire; of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for such offense. (1947, p. 40, Section 2, appvd. July 18, 1947.)

EXHIBIT "B"

Section 10, Chapter 6 Code of the City of Montgomery 1952.

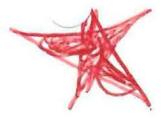
Every person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the negroes, where there are both white and negroes on the same car; provided, however, that negro nurse having in charge white children or sick or infirm white persons, may be assigned seats among white people.

Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit.

Section 11, Chapter 6 Code of the City of Montgomery 1952.

Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant.

L.A.P. digitized in 4/29/98



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FILED

AURELIA S. BROWDER; and)
SUSIE McDONALD and CLAUDETTE)
COLVIN, by Q. P. Colvin, next)
friend, and MARY LOUISE SMITH,)
by Frank Smith, next friend,)
and others similarly situated,)

JUN 19 1956

R. C. DOBSON
Clerk
By..... Deputy Clerk

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS and)
FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and)
GOODWYN J. RUPPENTHAL, individually)
and as Chief of Police of the City)
of Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and C. C. (JACK))
OWEN, JIMMY HITCHCOCK, and SIBYL)
POOL, as members of the ALABAMA)
PUBLIC SERVICE COMMISSION,)

Defendants.

JUDGMENT

This cause came on to be heard before a three-judge court duly convened pursuant to the provisions of Title 28, United States Code, Sections 2281 and 2284.

After trial on the merits and careful consideration of the evidence therein adduced and after oral arguments and submission of briefs by all parties, the Court, being fully advised in the premises, found in an opinion handed down on June 5, 1956, that the enforced segregation of Negro and white passengers on motor buses operating in the City of Montgomery as required by Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, violates the Constitution and laws of the United States.

Now, in accordance with that opinion, it is Ordered, Adjudged and Decreed that Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

It is further Ordered, Adjudged and Decreed that the defendants, their successors in office, assigns, agents, servants, employees, and persons acting on their behalf, be and they are hereby permanently enjoined and restrained from enforcing the aforesaid statutes and ordinances or any other statutes or ordinances which may require plaintiffs or any other Negroes similarly situated to submit to segregation in the use of the bus transportational facilities in the City of Montgomery, and from doing any acts or taking any action to require the Montgomery Bus Lines, Inc., or its drivers, or any other public bus transportation facility, or its drivers, to enforce such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

Costs are taxed against defendants.

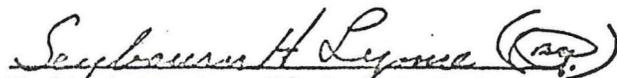
The injunction granted by this judgment is suspended for a period of ten days from the date hereof, and in the event an appeal is taken from this judgment within such period, such injunction will be further suspended until an additional order can be entered suspending such injunction during the pendency of such appeal.

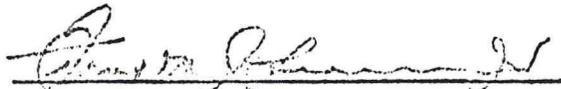
Judges Rives and Johnson concur in this judgment, Judge Lynne dissents therefrom except as to the order of

suspension, in which he concurs.

This the 17th day of June, 1956.


United States Circuit Judge


United States District Judge


United States District Judge

LAWS CONCERNING SEGREGATION ON BUSES

STATE LAWS

Title 48, Section 301 (2) A (2) APPLICATION OF ARTICLE - This article shall not be construed to apply to: Motor vehicles for hire while operating wholly within the limits of a city or incorporated town or within the police jurisdiction thereof; or between two or more incorporated towns or cities whose city limits join or are contiguous or whose police jurisdictions join or are contiguous.

Title 48, Section 301 (31a) SEPARATE ACCOMMODATIONS FOR WHITE AND COLORED RACES. - All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and for such refusal neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

Title 48, Section 301 (31b) OPERATORS OF PASSENGER STATIONS AND CARRIERS AUTHORIZED TO SEGREGATE WHITE AND COLORED RACES. - All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, Sec. 1, appvd. July 18, 1947.) (*italics supplied*)

CITY LAWS

Sec. 10. Separation of races--Required.

Every person operating a bus line in the city shall provide equal but separate accommodations for white people and Negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the Negroes, where there are both white and Negroes on the same car; provided, however, that Negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people. (*italics supplied*)

Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit. (Code 1930, Sections 603, 606.)

Sec. 11. Same--Powers of persons in charge of vehicle; passengers to obey directions.

Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant. (Code 1930, Sec. 604.) (*italics supplied*)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION



CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, and
Susie McDonald, and Jeaneatta
Reese, and Claudette Colvin, by
Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated,

Plaintiff s

v.

W. A. Gayle, Clyde Sellers and
Frank Parks, individually and as
members of the Board of Com-
missioners of the City of Montgomery,
Alabama, and Goodwyn J. Ruppenthal,
individually and as Chief of Police
of the City of Montgomery, Alabama, x
and

Defendants

The Montgomery City Lines, Inc.,
A Corporation, and James F. Blake, and
Robert Cleere, Defendants,
To the above named Defendant :

SUMMONS

You are hereby summoned and required to serve upon

Attorney Fred D. Gray,

plaintiff's attorney , whose address is

113 Monroe Street,
Montgomery, Alabama

an answer to the complaint which is herewith served upon you, within Twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

O. D. Street, Jr.

Clerk of Court.

Annie Schuler

Deputy Clerk.

Date: February 1, 1956.

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the

day of

19

I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel \$

United States Marshal.

Service

By

Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of

19

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____

United States District Court

FOR THE

SUMMONS IN CIVIL ACTION

days

Returnable not later than

after service.

Attorney for Plaintiff.

FPI ATLANTA—7-2-52—75M—1618



Middle District of Georgia
FOR THE
United States District Court

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 1st day of February, 1956, I received this summons and served it together with the complaint herein as follows:

On February 2, 1956 at 9:15AM I served a copy thereof, with a copy of the complaint attached on W. A. Gayle, City Hall, Room 206, Montgomery, Ala.

On February 2, 1956 at 9:15AM I served a copy thereof, with a copy of the complaint attached on the Board of Commissioners of the City of Montgomery W. A. Gayle, President, Room 206, City Hall, Montgomery, Alabama.

On February 2, 1956 at 9:00AM I served a copy thereof, with a copy of the complaint attached on Clyde Sellers, City Hall, Montgomery, Alabama.

On February 2, 1956 at 9:05AM I served a copy thereof, with a copy of the complaint attached on Frank Parks, City Hall, Montgomery, Ala.

On February 2, 1956 at 8:55AM I served a copy thereof, with a copy of the complaint attached on Goodwyn J. Ruppenthal, City Hall, Montgomery, Ala.

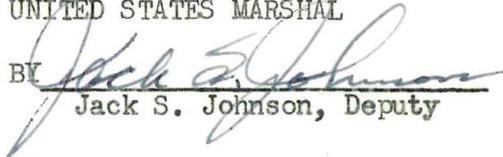
On February 2, 1956 at 9:30AM I served a copy thereof, with a copy of the complaint attached on The Montgomery City Lines, Inc., A Corp., by handing copy to James H. Bagley, Manager, 701 No. McDonough St., Montgomery, Ala.

On February 2, 1956 at 9:30AM I served a copy thereof, with a copy of the complaint attached on James F. Blake, 701 No. McDonough St., Montgomery, Ala.

On February 2, 1956 at 9:30AM I Served a copy thereof, with a copy of the complaint attached on Robert Cleere, 701 No. McDonough St., Montgomery, Ala.

Travel	.60
Service	16.00
Total	<u>16.60</u>

CHARLES S. PRESCOTT
UNITED STATES MARSHAL

BY 
Jack S. Johnson, Deputy

RETURNED AND FILED

FEB 20 1956

O. D. STREET, JR.
CLERK

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN,
by Q. P. Colvin, next friend,
and MARY LOUISE SMITH, by
Frank Smith, next friend,
and others similarly situated,

PLAINTIFFS,

V.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of Com-
missioners of the City of Mont-
gomery, Alabama, and GOODWYN J.
RUPPENTHAL, individually and as
Chief of Police of the City of
Montgomery, Alabama, and,
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE
and ROBERT CLEERE,

DEFENDANTS.

IN THE UNITED STATES DISTRICT

COURT FOR THE MIDDLE DISTRICT

OF ALABAMA,

NORTHERN DIVISION,

CIVIL ACTION NO. 1147-N.

FILED

FEB 21 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

MOTION TO DISMISS

Come Defendants W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, in the above styled cause and move this Court separately and severally to dismiss the action brought by Complaint, to dismiss and deny Plaintiffs' motion for temporary injunction, to dismiss and deny Plaintiffs' application for declaratory judgment and further to refuse to convene a statutory court of three judges as sought in the said complaint. As grounds therefor Defendants assign the following separately and severally:

1. That it affirmatively appears that indispensable parties, to-wit, the Governor of Alabama and the Attorney General of Alabama and the Alabama Public Service Commission are not made parties to this suit.

2. That it affirmatively appears that the parties necessary for the determination of the issues under a declaratory judgment are not before the court.

3. That it affirmatively appears that the application for an injunction does not seek restraint from enforcement of a state statute by a state officer so as to merit the convening of a statutory three-judge court.

4. That the wrongs and damages complained of occurred in the legal enforcement of the valid statutes of the State of Alabama and of the valid ordinances of the City of Montgomery.

5. That it does not now appear whether the state law or the city ordinance controls the action of Defendants. Comity requires that the test of state laws be first made in state courts.

6. That a preliminary injunction is not the remedy to be sought by Plaintiffs in that the object of a preliminary injunction is to maintain things as they are, that is, to preserve the status quo (to preserve pendente lite the last actual unconstested status that preceded the pending controversy), while Plaintiffs seek imposition of a new status not heretofore known in Alabama.

7. That one Plaintiff, to-wit, Jeaneatta Reese, was joined as a party plaintiff in this action without her knowledge or consent.

8. It affirmatively appears that two of the plaintiffs, to-wit, Mary Louise Smith and Claudette Colvin, were actually before the courts of the State of Alabama and could have adjudicated all matters which they now seek to have passed on by this Court.

9. That the authority under which the conspiracy charge is brought does not extend to the relief sought.

10. That it does not appear wherein Plaintiffs have suffered or will suffer irreparable injury so as to entitle them to preliminary injunction.

11. That this Court should exercise its discretion in declining to grant a preliminary injunction because the alleged injuries to Plaintiffs do not amount to irreparable injury which is clear, imminent and substantial.

12. That this Court in the exercise of its sound discretion should decline to adjudicate the constitutional issue presented by this action and should dismiss the complaint on the ground that the issues tendered should be determined in the first instance by courts of the State of Alabama.

13. That the proper exercise of the equitable jurisdiction by this court dictates an abstention from a decision concerning the constitutionality of the acts of the Alabama Legislature here drawn in question, and that this court, actuated by a scrupulous regard for the rightful independence of state government, should refuse to exercise equitable jurisdiction in this cause.

14. That the parties Plaintiff are not sufficiently representative to constitute the parties in a class action.

15. That this court has judicial knowledge that harmony between the Negro and white races in this city depends upon continued segregation.

16. There is no allegation of facts showing amount involved to be over Three Thousand Dollars (\$3,000.00).

17. It affirmatively appears that a declaratory judgment is not sought because the bill alleges a conspiracy.

18. The petition seeks to have this court pass on the constitutionality of an act of the State of Alabama. One of the attorneys filing the petition is of the opinion that the act which he seeks to have declared unconstitutional does not apply to the City of Montgomery. A copy of a statement of said attorney's ideas are attached hereto as Exhibit A. The court should not pass upon the validity of a state act which according to the opinion of persons filing petition is not applicable until the applicability of the statute has been passed upon by a state court.

19. That it does not appear wherein the Defendant City Commissioners and the Defendant Chief of Police are acting under color of law in causing arrest or harrassment of Plaintiffs who do not ride buses.

WHEREFORE, Defendants move this Court to dismiss this action for lack of jurisdiction and without waiving objections to the jurisdiction of this Court, to dismiss this action for failure to state a cause upon which relief can be granted. Defendants further move this Court to dismiss the complaint; to dismiss and deny Plaintiffs' application for preliminary injunction; to dismiss and deny Plaintiffs' application for declaratory judgment; to dismiss and deny Plaintiffs' application for the convening of a statutory three-judge court.

Walter J. Knabe

Walter J. Knabe

Drayton N. Hamilton

Drayton N. Hamilton

Herman H. Hamilton, Jr.

Herman H. Hamilton, Jr.

Attorneys for Defendants, W. A. Gayle,
Clyde Sellers, Frank Parks and Goodwyn J.
Ruppenthal.

*I have today received a copy of the motion to
dismiss. Feb. 21, 1956*

*Frank D. Gray,
Atty. for the Plaintiffs*

I hereby certify that I have delivered a copy of the foregoing Motion to Dismiss to Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This 21st day of February, 1956.

Walter J. Knabe

Walter J. Knabe,
Attorney for Defendants, W, A,
Gayle, Clyde Sellers and Frank
Parks, and Goodwyn J. Ruppenthal.

EXHIBIT A

LEGAL REQUIREMENTS CONCERNING THE

SEGREGATION OF RACES

ON CITY BUSES

The only applicable provisions of law relating to the segregation of races on motor busses operated in the city of Montgomery and its police jurisdiction are contained in Chapter 6, Sections 10 and 11 of the Montgomery City Code.

Section 10 requires equal but separate accommodations to be brought about by requiring the employees in charge of the busses to assign passenger seats in such manner as to separate white people from Negroes where there are both on the same car (sic.). Segregation may, at the option of the operators of bus lines, be brought about by providing separate busses for the two races.

Section 11 of the Code vest in bus drivers the power of police officers for the purpose of carrying out the provisions of Section 10 and makes it unlawful for a passenger to refuse to take a seat among those assigned to the race to which he belongs, at the request of the driver, if there is such a seat vacant.

It should be noted that the accommodations provided the two races must be equal and also that the authority to segregate is limited to the assignment of passenger seats and that no person is required to obey the request of the driver to move to another section of the bus unless there is a seat vacant. The City Code does not prescribe the manner in which seats should be assigned, nor does it require that any number of seats or any particular part of the vehicle shall be set aside for either race. Complete discretion is left in the operators to make the assignment of seats, subject only to the requirement of equality.

The attorney for the Montgomery City Lines now appears to contend that the seating on busses within the City is governed by state law, and refers particularly to an act adopted July 18, 1947 (General Acts of 1947, page 40). It should be noted, however, that the Act referred to has been codified in the Code of Alabama as Sections 301 (31b) and Section 301 (31c) of Title 48, which is set out as a part of the article designated as the Alabama Motor Carrier Act of 1939. It should be noted that Section 301 (2) (A) (2) of Title 48 expressly excepts from the operation of the article motor vehicles operating wholly within the limits of a city or incorporated town or within the police jurisdiction thereof.

The attorney for Montgomery City Lines argues however, that the arrangement described above is a mistake on the part of the codifier and that the Act of 1947 is a general act intended to apply to all motor vehicles for hire, whether operating under the jurisdiction of the Alabama Public Service Commission or entirely within the limits of a single municipality. As to this contention, it is sufficient to point out that by virtue of its very language, the 1947 Act belongs where the codifier placed it. It starts off by referring to passenger stations, waiting rooms, ticket windows and the like, and it is a matter of common knowledge that municipal busses do not have facilities of this character, but that busses operating intrastate and interstate under the jurisdiction of the Alabama Public Service Commission and the Interstate Commerce Commission do offer such facilities.

The 1947 Act speaks in terms of a "motor transportation company". There is no definition of motor transportation company given in the Act or in the present law. It should be noted, however, that the word "motor transportation company" was defined in the earlier law (See Code of Alabama, Title 48, Section 239), but the definition was immediately followed by a proviso excepting motor vehicles engaged exclusively in transportation within a city or town or its police jurisdiction. Looking at the legislative history it becomes clear that the language of the 1947 Act was borrowed from the earlier Act referred to and was merely a reenactment, in part, of the segregation provisions of the earlier Act (See Code of Alabama, Title 48, Sections 268 and 269) which was repealed.

Moreover, separate and apart from any question of whether the 1947 Act is applicable to municipal busses, it should be noted that it is entirely permissive in its provisions and that no segregation is required. So far as the 1947 Act is concerned, bus companies are left entirely free to handle the problems of the separation of the races as they see fit, or, for that matter, not to separate them at all. To say then that the bus company is required under this Act to provide for the separation of the races in any particular manner is wholly untenable.

The only provision of state law requiring the separation of races on busses is contained in an Act of July 6, 1945 (General Acts of Alabama, 1945, page 731). This provision is codified in Title 48, Section 301 (31a) and we do not believe it can be reasonably contended that this provision is improperly codified. Not only does it speak in term of waiting rooms, ticket windows and the like, but it expressly provides that it "shall be administered and enforced by the Alabama Public Service Commission in the same manner as the other provisions of the Alabama Motor Carrier Act, 1939 are administered and enforced". (Italics supplied)

The very clear intention of the state legislature was to leave the regulation of municipal busses exclusively with the police power of the municipalities in which they operate. This was pointed out by the Supreme Court of Alabama in an opinion rendered February 26, 1953 in the case of Smith Transfer Company, Inc. vs. Robins Transfer Company, Inc. 63 So 2nd 351, in which the court said:

The regulatory provisions prescribed by the said Motor Carrier Act were enacted under the state's police power and it seems clear to us that the reason for exempting operations carried on solely within a city and its police jurisdiction was to leave to the cities the authority to regulate operations over the territory to which its police jurisdiction extends.

We are attaching copies in full of the laws referred to and we believe they fully support every thing we have said.

The position of The Montgomery Improvement Association has been consistent throughout. We have expressed our willingness and desire to abide by the law as now written until it is changed. However, we think we have a right to insist that the law be fairly and reasonably administered. We have not asked for an abolition of segregation at this time, but we have only asked that all passengers be given that equality in seating which the law requires, and that this be brought about by loading busses from back to front with Negro passengers, and from front to back with white passengers on a first come - first served basis, without reservation of seats, and that no member of either race be required to surrender his seat to a member of the other race unless another seat is available.

We repeat, as we have said before, there is no issue between the Negro citizens of Montgomery and the Montgomery City Lines that cannot be solved by negotiations in good faith between people of good will, and there is no legal barrier to such negotiations.

AURELIA S. BROWDER, ET ALS.,

PLAINTIFFS,

VS.

W. A. GAYLE, ET ALS.,

DEFENDANTS.

MOTION TO DISMISS

LAW OFFICES

KNABE & NACHMAN

HILL BUILDING

MONTGOMERY 1, ALABAMA

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. Colvin, next friend, and
MARY LOUISE SMITH, by Frank Smith,
next friend, and others similarly
situated,

PLAINTIFFS,

V.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
members of the Board of Commis-
sioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE
and ROBERT CLEERE,

DEFENDANTS.

ANSWER

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT

OF ALABAMA,

NORTHERN DIVISION,

CIVIL ACTION NO. 1147-N.

FILED

FEB 21 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

Come Defendants, W. A. Gayle, Clyde Sellers and Frank Parks,
individually and as members of the Board of Commissioners of the
City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually
and as Chief of Police of the City of Montgomery, Alabama, and
without waiving their motion to dismiss or any ground thereof, but
expressly insisting thereon, for answer to this cause say:

1. That this cause fails to state a claim against these
Defendants upon which relief can be granted.

2. These Defendants deny each and every allegation contained
in paragraphs 1(a) through 1(c) of the complaint.

3. These Defendants deny each and every allegation contained
in paragraph 2 of the complaint.

4. These Defendants deny each and every allegation contained
in paragraph 3 of the complaint.

5. These Defendants are not informed as to the matters alleged
in paragraph 4 of the complaint and demand strict proof thereof.

6. These Defendants deny that the franchise issued by the City of Montgomery to Montgomery City Lines, Inc., is an exclusive franchise. Defendants admit every other allegation of paragraph 5 of the complaint.

7. The allegations in paragraph 6 relate to other Defendants.

8. These Defendants admit that they seek to enforce the statutes of the State of Alabama and the ordinances of the City of Montgomery, Alabama. These Defendants deny all other allegations of paragraph 7. Defendants further answering paragraph 7 herein deny that the Defendants named in paragraph 6 have operated their buses in violation of rights guaranteed to Plaintiffs and other Negro citizens under the Constitution and laws of the United States.

9. Defendants deny each and every allegation of paragraph 8 of the complaint.

10. Defendants admit that they are affiliated with the Central Alabama White Citizens Council. Defendant Gayle admits that he has urged white employers of Negroes not to cooperate in an illegal boycott. Defendants Gayle, Sellers and Parks deny each and every other allegation of paragraph 9.

11. Defendants are not informed of the intentions and desires of other Negroes as set forth in paragraph 10 of the complaint.

12. Defendants deny each and every allegation of paragraph 11 of the complaint.

And having fully answered Plaintiffs' complaint, application for preliminary injunction, application for declaratory judgment and application for the convening of a statutory three-judge court, Defendants pray that they may be discharged with their reasonable costs incurred.

And further answering, Defendants aver that segregation of privately owned buses within cities within the State of Alabama is in accordance with the laws of the State of Alabama and the City of Montgomery.

Walter J. Ruppenthal

Drayton Hamilton

Herbert Hamilton Jr.

Attorneys for Defendants Gayle, Sellers,
Parks and Ruppenthal.

I hereby certify that I have delivered a copy of
the foregoing Answer to Charles D. Langford and Fred D.
Gray, Attorneys for Plaintiffs, 113 Monroe Street,
Montgomery, Alabama.

This 21st day of February, 1956.

Walter J. Knabe

Walter J. Knabe,
Attorney for Defendants, W. A.
Gayle, Clyde Sellers and Frank
Parks, and Goodwyn J. Ruppenthal.

*I hereby accept service of this answer
on this 21st day of Feb. 1956.*

*Fred D. Gray,
Atty for the Plaintiff.*

AURELIA S. BROWDER, ET ALS.,

PLAINTIFFS,

VS.

W. A. GAYLE, ET ALS.,

DEFENDANTS.

ANSWER

LAW OFFICES

KNABE & NACHMAN

HILL BUILDING

MONTGOMERY 1, ALABAMA

7. The allegations in paragraph 6 relate to other Defendants.

8. The allegations in paragraph 7 relate to other defendants.

9. These Defendants admit that they seek to enforce the statutes of the State of Alabama and the ordinances of the City of Montgomery, Alabama. These Defendants deny all other allegations of paragraph 8. Defendants further answering paragraph 8 herein deny that the Defendants named in paragraph 6 have operated their buses in violation of rights guaranteed to Plaintiffs and other Negro citizens under the Constitution and laws of the United States.

10. Defendants deny each and every allegation of paragraph 8A of the complaint.

11. Defendants deny each and every allegation of paragraph 9 of the complaint.

12. Defendants are not informed of the intentions and desires of other Negroes as set forth in paragraph 10 of the complaint.

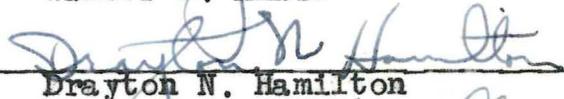
13. Defendants deny each and every allegation of paragraph 11 of the complaint.

And having fully answered Plaintiffs' complaint, application for preliminary injunction, application for declaratory judgment, and application for the convening of a statutory three-judge court, Defendants pray that they may be discharged with their reasonable costs incurred.

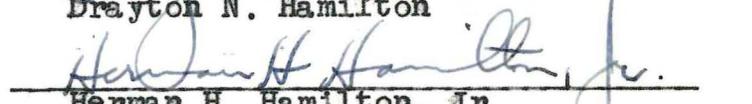
And further answering, Defendants aver that segregation of privately owned buses within cities within the State of Alabama is in accordance with the laws of the State of Alabama and the City of Montgomery.



 Walter J. Knabe



 Drayton N. Hamilton



 Herman H. Hamilton, Jr.
 Attorneys for Defendants, W. A. Gayle,
 Clyde Sellers, Frank Parks and Goodwyn
 J. Ruppenthal, Individually and in
 their Representative Capacities.

by mail
 I hereby certify that I have delivered a copy of the foregoing answer to Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This 27 day of March, 1956.



 Walter J. Knabe, Attorney for Defendants,
 W. A. Gayle, Clyde Sellers and Frank
 Parks and Goodwyn J. Ruppenthal.

AURELIA S. BROWDER, and)
SUSIE McDONALD, and CLAUDETTE)
COLVIN, by Q. P. COLVIN,)
next friend, and MARY LOUISE)
SMITH, by FRANK SMITH, next)
friend, and others similarly)
situated,)

PLAINTIFFS,)

VS.)

W. A. GAYLE, CLYDE SELLERS and)
FRANK PARKS, individually and as)
members of the Board of Commis-)
sioners of the City of Montgomery;)
Alabama, and GOODWYN J. RUPPENTHAL,)
individually and as Chief of)
Police of the City of Montgomery,)
Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and)
C. C. (JACK) OWEN, JIMMIE HITCHCOCK)
AND SYBIL POOL as members of the)
ALABAMA PUBLIC SERVICE COMMISSION,)

DEFENDANTS.)

IN THE UNITED STATES STATES
DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN
DIVISION,
CIVIL ACTION NO. 1147 - N.

FILED

MAR 27 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

MOTION TO STRIKE

Now come Defendants, W. A. Gayle, Clyde Sellers, Frank Parks and Goodwyn J. Ruppenthal, as individuals, and move this Honorable Court to strike their names as individuals from the petition filed herein, and as grounds for such motion say as follows:

1. That there is no allegation against any one of said defendants in his individual capacity.
2. The complaint shows on its face that the alleged acts complained of were not in an individual capacity but as officials or officers of the City of Montgomery, Alabama.

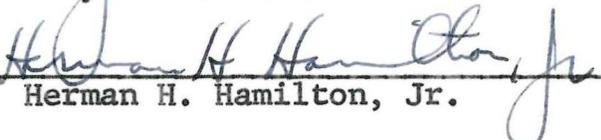
Respectfully submitted,



Walter J. Knabe



Drayton N. Hamilton



Herman H. Hamilton, Jr.

Attorneys for Defendants, W. A. Gayle,
Clyde Sellers, Frank Parks and Goodwyn J.
Ruppenthal

2.

I hereby certify that I have delivered a copy ^{by mail} of the foregoing Motion to Strike to Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This 27th day of March, 1956.

Walter J. Gayle

Of Counsel for Defendants, W. A. Gayle, Clyde Sellers, Frank Parks and Goodwyn J. Ruppenthal.

AURELIA S. BROWDER, and
Susie McDonald, and Jeaneatta
Reese, and Claudette Colvin,
by Q. P. Colvin, next friend,
and Mary Louise Smith, by Frank
Smith, next friend, and others
similarly situated,
Plaintiffs,

vs.

W. A. GAYLE, CLYDE SELLERS AND
FRANK PARKS, individually and as
members of the Board of Commissioners,
of the City of Montgomery, Alabama, and
Goodwyn J. Ruppenthal, individually,
and as Chief of Police of the City of
Montgomery, Alabama, and,

THE MONTGOMERY CITY LINES, INC., A
Corporation, and James F. Blake, and
Robert Cleere,
Defendants.

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147 N

It is stipulated between the Counsel for the Plaintiff and
Counsel for the Defendants, Montgomery City Lines, Inc., Robert
Cleere and James F. Blake, that the time of filing of these
Defendant's defensive pleadings shall be extended to Friday,
February 24, 1956.

W. A. Gray
Charles P. Langford
Counsel for the Plaintiffs
Jack Orreana
Counsel for the Defendants,
The Montgomery City Lines, Inc.,
Robert Cleere and James F. Blake

FILED

FEB 23 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN,
by Q. P. Colvin, next friend,
and MARY LOUISE SMITH, by Frank
Smith, next friend, and others
similarly situated,

Plaintiffs

V.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
members of the Board of Commiss-
ioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC., a
corporation, and James F. Blake, and
Robert Cleere,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147 N

FILED

FEB 23 1956

D. D. Street, Jr.
Clerk

By _____
Deputy Clerk

Now comes the Defendant, Montgomery City Lines, Inc., and for
its answer to the Complaint says:

1, 2, 3. Defendant, Montgomery City Lines, Inc., neither admits
nor denies the grounds of jurisdiction alleged in Paragraphs 1, 2, and 3.

4. The Defendant, Montgomery City Lines, Inc., admits the
allegations in Paragraph 4.

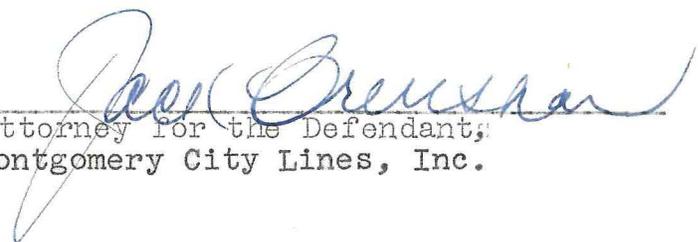
5. The Defendant, Montgomery City Lines, Inc., admits the
allegations of Paragraph 5 of the Complaint that it is a corporation
organized and existing under the laws of the State of Alabama with its
principal place of business in the City of Montgomery and admits the
allegation that it is engaged in operating within the corporate limits
and police jurisdiction a bus line for the transportation of passengers
for hire pursuant to a franchise issued by the City of Montgomery; but
denies that it has an exclusive franchise.

6. The Defendant, Montgomery City Lines, Inc. admits the alle-
gations of Paragraph 6 of the Complaint that it has operated its buses
as required by the Statutes and Ordinances set out in the Complaint re-
quiring it to provide equal but separate accommodations for the white
and colored races. The Defendant, Montgomery City Lines, Inc., further
admits the allegations of Paragraph 6 of the Complaint that the defen-
dants, R. W. Cleere and James F. Blake are employees and drivers of
buses owned and operated by the Montgomery City Lines, Inc. and have

acted under orders from said Company to abide by all applicable laws and ordinances including the Statutes and Ordinances requiring the furnishing of separate but equal accommodations for the races. The defendant, Montgomery City Lines, Inc., however alleges that its actions and the issuance of rules, regulations and orders by it to the drivers has been solely for the purpose of complying with the requirements of the laws of the State of Alabama, Ordinances of the City of Montgomery and the requirements of its franchise that it abide by applicable laws and ordinances and denies the other allegations of said paragraph.

7. The Defendant, Montgomery City Lines, Inc., denies that it has conspired with the other defendants or with anyone to commit any unlawful or illegal act.

8, 9, 10, 11. This Defendant, Montgomery City Lines, Inc., admits that part of Paragraph 8 of the Complaint which alleges that since December 5, 1955 most negro citizens of the City of Montgomery have refrained from making use of its transportation, but as to the remainder of Paragraph 8 and the allegations of Paragraphs 7, 9, 10 and 11 alleges that this Defendant is without knowledge or information to form a belief as to the truth of said averments.



Attorney for the Defendant,
Montgomery City Lines, Inc.

AURELIA S. BROWDER, and SUSIE MCDONALD, and JEANEATTA REESE, and CLAUDETTE COLVIN, by Q. P. Colvin, next friend, and MARY LOUISE SMITH, by Frank Smith, next friend, and others similarly situated,

Plaintiffs

V.

W. A. GAYLE, CLYDE SELLERS and FRANK PARKS, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and GOODWYN J. RUPPENTHAL, individually and as Chief of Police of the City of Montgomery, Alabama and, THE MONTGOMERY CITY LINES, INC., A corporation, and James F. Blake, and Robert Cleere,

Defendants

IN THE UNITED STATES
DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

CIVIL ACTION No. 1147-N

FILED

FEB 23 1956

O. D. Street, Jr.
Clerk
By _____
Deputy Clerk

Now come the defendants, James F. Blake and Robert Cleere, and for their answer to the Complaint say:

1, 2, 3. They neither admit nor deny the grounds of jurisdiction alleged in Paragraphs 1, 2, and 3.

4. They admit the allegations of Paragraph 4.

5. They admit the allegations of Paragraph 5 except that they are informed that the franchise of the Montgomery City Lines, Inc. is not an exclusive franchise.

6. They admit the allegations of Paragraph 6 that they are employees and drivers of buses owned by the Montgomery City Lines, Inc. and that as such employees they have acted pursuant to orders from said Company, but deny that they individually are seeking to enforce any rules and regulations other than under orders from their employer, Montgomery City Lines, Inc.; and they are informed that said orders, rules and regulations of their employer, Montgomery City Lines, Inc., have been solely for the purpose of complying with the requirements of the laws of the State of Alabama, ordinances of the City of Montgomery and the requirements of its franchise in the City of Montgomery.

7, 8, 9, 10 and 11. These defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraphs 7, 8, 9, 10 and 11.



Attorney for the Defendants
James F. Blake and Robert Cleere

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. Colvin, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly
situated,

Plaintiffs

Vs.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
Members of the Board of Com-
missioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
A corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147-N

FILED

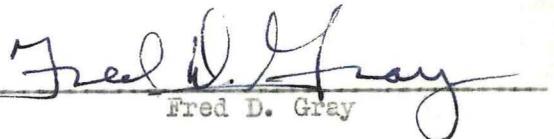
MAR 8 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

MOTION FOR LEAVE TO AMEND COMPLAINT

Comes the Plaintiffs and, move this Honorable Court for leave to
file in the above cause, an Amendment to the Complaint, a copy of said
Amendment is hereto attached.


Fred D. Gray


Charles D. Langford

113 Monroe Street
Montgomery, Alabama

Attorneys for Plaintiffs.

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly
situated,

Plaintiffs

VS.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
Members of the Board of Com-
missioners of the City of Montgomery
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
A corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147-N

AMENDMENT TO COMPLAINT

Come the Plaintiffs and, with leave of the Court, amend their
Complaint heretofore filed in this cause as follows:

(1) By striking therefrom the name of Jeaneatta Reese as a
party plaintiff wherever the same appears in said Complaint, and also by
striking each and every allegation of said Complaint concerning the said
Jeaneatta Reese.

(2) By adding to the caption of the Complaint as parties defendant,
G. C. (Jack) Owens, Jimmie Hitchcock and Sybil Pool as members of the Ala-
bama Public Service Commission.

(3) By striking subsection (d) of Section 2 of said Complaint.

(4) By amending Section 5 of said Complaint so that as amended
said section shall read as follows:

5. The Defendants, W. A. Gayle, Clyde Sellers and Frank Parks
are residents of the City of Montgomery, Montgomery County, Ala-
bama, and are all members of the Board of Commissioners of said
City of Montgomery. The Defendant, W. A. Gayle is also Mayor of
said City. The Defendant, Goodwyn J. Ruppenthal, is a resident
of Montgomery County, Alabama and is Chief of Police of said City.
This action is brought against the Defendants named above in this

section both as individuals and in their official capacities. The Defendant, Montgomery City Lines, Inc., is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in the said City of Montgomery, and is engaged in operating, within the corporate limits and police jurisdiction of said City, a bus line for the transportation of passengers for hire, pursuant to a franchise issued by said City of Montgomery.

(5) By adding, immediately following the last sentence of Section 6 of the Complaint a new sentence reading as follows:

As drivers of said buses, the said Robert W. Cleere and James E. Blake have and are exercising the powers of police officers in the enforcement of the Statutes and Ordinances copies of which are set forth in Exhibit "A" of the original Complaint.

(6) By adding immediately following Section 6 of said Complaint a new section designated Section 7 and reading as follows:

7. The Defendant, C. C. (Jack) Owens, Jimmie Hitchcock and Sybil Pool are residents of Montgomery County, Alabama, are members of the Alabama Public Service Commission and are made parties defendant hereto in their capacity as members of said Commission. The Alabama Public Service Commission is a regulatory body organized and existing under the laws of the State of Alabama and expressly charged by law with the responsibility for the administration and enforcement of Title 48 of Section 301 (31a) of the Code of Alabama of 1940, as amended. Plaintiffs believe that said Commission is also charged by law with responsibility for the administration and enforcement of Title 48, Section 301 (31b) and (31c) of the Code of Alabama of 1940, as amended. The said Defendants, Owens, Hitchcock, and Pool, acting as state officers and under color of said provisions of the Code of Alabama, have issued or caused to be issued orders directing and requiring the segregation of Negroes on buses and other transportation facilities subject to the jurisdiction of the said Alabama Public Service Commission.

(7) By striking the Section of said Complaint originally designated as "7" and substituting therefor a new Section designated as Sections "8" and "8A" and reading as follows:

8. Defendants, W. A. Gayle, Clyde Sellers and Frank Parks seek to enforce the aforesaid statutes and ordinances and to compel

and require the Plaintiffs, and all other Negro citizens of the City of Montgomery, to comply with the provisions of the aforesaid unconstitutional statutes and ordinances; and pursuant to their orders, the Plaintiffs and other Negro citizens who fail to observe these statutes and ordinances are subject to arrest and confinement in jail.

Defendant, Goodwyn J. Ruppenthal, Chief of Police of said City of Montgomery, Alabama and said Defendants, W. A. Gayle, Clyde Sellers and Frank Parks, seek and have agreed or conspired among themselves, under color of law, to compel obedience to the unconstitutional statutes and ordinances aforesaid with respect to the segregation of Plaintiffs and other Negro citizens as passengers on the Montgomery City Lines, Inc., and have actually caused to be arrested and/or caused to be arrested and confined to jail, and/or fined and/or otherwise punished a number of Negro citizens solely because of their insistence, under the Constitution and Law of the United States, upon using the facilities of Montgomery City Lines, Inc., without being segregated thereon; to-wit: the Plaintiff, Claudette Colvin, the said Claudette Colvin having been arrested on or about March 2, 1955, sentenced in the Juvenile Court of Montgomery County, Alabama, in Equity; the Plaintiff, Mary Louise Smith, the said Mary Louise Smith having been arrested on or about October 21, 1955, and convicted and fined \$9.00 in the Recorders' Court of said City of Montgomery and one Rosa Parks, the said Rosa Parks having been arrested on or about December 1, 1955 and convicted and fined \$14.00 in the Recorders' Court of the City of Montgomery, which conviction was sustained on appeal to the Circuit Court of Montgomery County, Alabama, on or about March 22, 1956.

8A. The Defendants, W. A. Gayle, Clyde Sellers, Frank Parks, Goodwyn J. Ruppenthal, Robert W. Cleere and James E. Blake, in their actions aforesaid, under color of the said statutes of the State of Alabama, have acted and were acting in the capacity of officials of the State of Alabama.

(8) By changing the number of the section of said Complaint originally designated as "Section 8" to Section "9".

(9) By striking from said Complaint the Section thereof originally designated as Section 9.

(10) By amending the prayer of said Complaint to read as follows:

WHEREFORE, Plaintiffs respectfully pray that:

1. The Court convene a three-judge Court as provided by Title 28 of the United States Code, Section 2284.

2. The Court advance this cause on the docket and order a speedy hearing thereof according to law and that upon such hearing the Court enter a temporary injunction to enjoin and restrain the Defendants, and each of them, from enforcing Section 301 (31a, 31b, 31c) of Title 48 of the Code of Alabama of 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Montgomery City Code, 1952, and any and all customs, practices and usages, pursuant to which Plaintiffs or other persons similarly situated are segregated in the buses of the Montgomery City Lines, Incorporated, on the ground that said statutes and/or ordinances are null and void and in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The Court upon a final hearing of this cause will:

(a) Enter a final judgment and decree that will declare and define the legal rights of the parties in relation to the subject matter of this controversy.

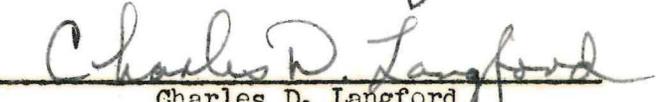
(b) Enter a final judgment and decree which will declare that Section 301 (31a, 31b, 31c) of Title 48, Code of Alabama 1940, as amended, and Section 10 and 11 of Chapter 6 Code of the City of Montgomery 1952 are unconstitutional and, therefore, null and void in that they deny and deprive the Plaintiffs and other Negro citizens similarly situated the equal protection of the laws secured by the Fourteenth Amendment to the United States Constitution and the rights and privileges secured to them by Section 1981 and 1983 of Title 42 United States Code.

(c) Enter a final judgment and decree declaring that the acts of the Defendants in seeking to compel the Plaintiffs and other Negro citizens similarly situated to use the bus facilities provided by the Defendant, Montgomery City Lines, Incorporated, on a segregated bases, and in seeking to enforce said unconstitutional statutes and ordinances are in violation to the Fourteenth Amendment to the United States Constitution and in violation of Title 42, Section 1985, of the United States Code.

(d) Enter a final judgment and decree enjoining the Defendants, their agents, servants or employees from enforcing the forestated statutes and ordinances, on the ground that they are unconstitutional and, therefore, null and void as forestated.

4. The Court allow Plaintiffs their costs and such other relief as may appear to the Court to be just.


Fred D. Gray


Charles D. Langford

113 Monroe Street
Montgomery, Alabama

Attorneys for Plaintiffs.

A copy of the foregoing Amendment to the Complaint was this day mailed, postage prepaid, to Attorneys Walter Knabe, Drayton N. Hamilton and Herman H. Hamilton, Jr., Hill Building, Montgomery, Alabama and Attorney Jack Crenshaw, First National Bank Building, Montgomery, Alabama, Attorneys of Record for the Defendants in this cause.

Witnessed this 8th day of March, 1956.


Attorney for the Plaintiffs

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION NO. 1147-N

AURELIA S. BROWDER, ET ALS.,

PLAINTIFFS,

VS.

W. A. GAYLE, ET ALS.,

DEFENDANTS.

MOTION FOR LEAVE TO AMEND COMPLAINT

LAW OFFICES
FRED D. GRAY

113 Monroe Street
Montgomery, Alabama

AURELIA S. BROWDER, and
SUSIE McDONALD, and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARY LOUISE SMITH,
by FRANK SMITH, next friend, and
others similarly situated,

PLAINTIFFS,

VS.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of Com-
missioners of the City of Mont-
gomery, Alabama, and GOODWYN J.
RUPPENTHAL, individually and as
Chief of Police of the City of
Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE
and ROBERT CLEERE, and
C. C. (Jack) OWEN, JIMMIE HITCHCOCK
AND SYBIL POOL as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

DEFENDANTS.

IN THE UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION,

FILED

MAR 27 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

MOTION TO DISMISS

Come Defendants W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, in the above styled cause and move this Court separately and severally to dismiss the action brought by complaint, to dismiss and deny Plaintiffs' motion for temporary injunction, to dismiss and deny Plaintiff's application for declaratory judgment and further to refuse to convene a statutory court of three judges as sought in the said complaint. As grounds therefor Defendants assign the following separately and severally:

1. That it affirmatively appears that indispensable parties, to-wit, the Governor of Alabama and the Attorney General of Alabama are not made parties to this suit.
2. That it affirmatively appears that the parties necessary for the determination of the issues under a declaratory judgment are not before the Court.
3. There is no justiciable issue between the parties.

4. That it does not now appear whether the state law or the city ordinance controls the action of Defendants. Comity requires that the test of state laws be first made in state courts.

5. That a preliminary injunction is not the remedy to be sought by Plaintiffs in that the object of a preliminary injunction is to maintain things as they are, that is, to preserve the status quo (to preserve pendente lite the last actual uncontested status that preceded the pending controversy), while Plaintiffs seek imposition of a new status not heretofore known in Alabama.

6. It affirmatively appears that two of the Plaintiffs, to-wit, Mary Louise Smith and Claudette Colvin, were actually before the courts of the State of Alabama and could have adjudicated all matters which they now seek to have passed on by this Court.

7. That the authority under which the conspiracy charge is brought does not extend to the relief sought.

8. That it does not appear wherein Plaintiffs have suffered or will suffer irreparable injury so as to entitle them to preliminary injunction.

9. That this Court should exercise its discretion in declining to grant a preliminary injunction because the alleged injuries to Plaintiffs do not amount to irreparable injury which is clear, imminent and substantial.

10. That this Court in the exercise of its sound discretion should decline to adjudicate the constitutional issue presented by this action and should dismiss the complaint on the ground that the issues tendered should be determined in the first instance by courts of the State of Alabama.

11. That the proper exercise of the equitable jurisdiction by this court dictates an abstention from a decision concerning the constitutionality of the acts of the Alabama Legislature here drawn in question, and that this court, actuated by a scrupulous regard for the rightful independence of state government, should refuse to exercise equitable jurisdiction in this cause.

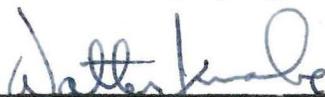
12. That the parties Plaintiff are not sufficiently representative to constitute the parties in a class action.

13. That this court has judicial knowledge that harmony between the Negro and white races in this city depends upon continued segregation.

14. There is no allegation of facts showing amount involved to be over Three Thousand Dollars (\$3,000.00).

15. The petition seeks to have this court pass on the constitutionality of an act of the State of Alabama. One of the attorneys filing the petition is of the opinion that the act which he seeks to have declared unconstitutional does not apply to the City of Montgomery. A copy of a statement of said attorney's ideas are attached hereto as Exhibit A. The court should not pass upon the validity of a state act which according to the opinion of persons filing petition is not applicable until the applicability of the statute has been passed upon by a state court.

WHEREFORE, Defendants move this Court to dismiss this action for lack of jurisdiction and without waiving objections to the jurisdiction of this Court, to dismiss this action for failure to state a cause upon which relief can be granted. Defendants further move this Court to dismiss the complaint; to dismiss and deny Plaintiffs' application for preliminary injunction; to dismiss and deny Plaintiffs' application for declaratory judgment.



 Walter J. Knabe



 Drayton N. Hamilton



 Herman H. Hamilton, Jr.

Attorneys for Defendants, W. A. Gayle, Clyde Sellers, Frank Parks and Goodwyn J. Ruppenthal, Individually and in their Representative Capacities.

I hereby certify that I have delivered a copy of the foregoing motion to dismiss ^{by mail} to Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This 27 day of March, 1956.



 Walter J. Knabe

Attorney for Defendants, W. A. Gayle, Clyde Sellers and Frank Parks, and Goodwyn J. Ruppenthal, Individually and in their Representative Capacities.

LEGAL REQUIREMENTS CONCERNING THE
SEGREGATION OF RACES
ON CITY BUSES

The only applicable provisions of law relating to the segregation of races on motor busses operated in the city of Montgomery and its police jurisdiction are contained in Chapter 6, Sections 10 and 11 of the Montgomery City Code.

Section 10 requires equal but separate accommodations to be brought about by requiring the employees in charge of the busses to assign passenger seats in such manner as to separate white people from Negroes where there are both on the same car (sic.). Segregation may, at the option of the operators of bus lines, be brought about by providing separate busses for the two races.

Section 11 of the Code vest in bus drivers the power of police officers for the purpose of carrying out the provisions of Section 10 and makes it unlawful for a passenger to refuse to take a seat among those assigned to the race to which he belongs, at the request of the driver, if there is such a seat vacant.

It should be noted that the accommodations provided the two races must be equal and also that the authority to segregate is limited to the assignment of passenger seats and that no person is required to obey the request of the driver to move to another section of the bus unless there is a seat vacant. The City Code does not prescribe the manner in which seats should be assigned, nor does it require that any number of seats or any particular part of the vehicle shall be set aside for either race. Complete discretion is left in the operators to make the assignment of seats, subject only to the requirement of equality.

The attorney for the Montgomery City Lines now appears to contend that the seating on busses within the City is governed by state law, and refers particularly to an act adopted July 18, 1947 (General Acts of 1947, page 40). It should be noted, however, that the Act referred to has been codified in the Code of Alabama as Sections 301 (31b) and Section 301 (31c) of Title 48, which is set out as a part of the article designated as the Alabama Motor Carrier Act of

1939. It should be noted that Section 301 (2) (A) (2) of Title 48 expressly excepts from the operation of the article motor vehicles operating wholly within the limits of a city or incorporated town or within the police jurisdiction thereof.

The attorney for Montgomery City Lines argues however, that the arrangement described above is a mistake on the part of the codifier and that the Act of 1947 is a general act intended to apply to all motor vehicles for hire, whether operating under the jurisdiction of the Alabama Public Service Commission or entirely within the limits of a single municipality. As to this contention, it is sufficient to point out that by virtue of its very language, the 1947 Act belongs where the codifier placed it. It starts off by referring to passenger stations, waiting rooms, ticket windows and the like, and it is a matter of common knowledge that municipal busses do not have facilities of this character, but that busses operating intrastate and interstate under the jurisdiction of the Alabama Public Service Commission and the Interstate Commerce Commission do offer such facilities.

The 1947 Act speaks in terms of a "motor transportation company". There is no definition of motor transportation company given in the Act or in the present law. It should be noted, however, that the word "motor transportation company" was defined in the earlier law (See Code of Alabama, Title 48, Section 239), but the definition was immediately followed by a proviso excepting motor vehicles engaged exclusively in transportation within a city or town or its police jurisdiction. Looking at the legislative history it becomes clear that the language of the 1947 Act was borrowed from the earlier Act referred to and was merely a reenactment, in part, of the segregation provisions of the earlier Act (See Code of Alabama, Title 48, Sections 268 and 269) which was repealed.

Moreover, separate and apart from any question of whether the 1947 Act is applicable to municipal busses, it should be noted that it is entirely permissive in its provisions and that no segregation is required. So far as the 1947 Act is concerned, bus companies are left entirely free to handle the problems of the separation of the races as they see fit, or, for that matter, not to separate them at all. To say then that the bus company is required under this Act to

provide for the separation of the races in any particular manner is wholly untenable.

The only provision of state law requiring the separation of races on busses is contained in an Act of July 6, 1945 (General Acts of Alabama, 1945, page 731). This provision is codified in Title 48, Section 301 (31a) and we do not believe it can be reasonably contended that this provision is improperly codified. Not only does it speak in term of waiting rooms, ticket windows and the like, but it expressly provides that it "shall be administered and enforced by the Alabama Public Service Commission in the same manner as the other provisions of the Alabama Motor Carrier Act, 1939 are administered and enforced". (Italics supplied)

The very clear intention of the state legislature was to leave the regulation of municipal busses exclusively with the police power of the municipalities in which they operate. This was pointed out by the Supreme Court of Alabama in an opinion rendered February 26, 1953 in the case of Smith Transfer Company, Inc. vs. Robins Transfer Company, Inc. 63 So 2nd 351, in which the court said:

The regulatory provisions prescribed by the said Motor Carrier Act were enacted under the state's police power and it seems clear to us that the reason for exempting operations carried on solely within a city and its police jurisdiction was to leave to the cities the authority to regulate operations over the territory to which its police jurisdiction extends.

We are attaching copies in full of the laws referred to and we believe they fully support every thing we have said.

The position of The Montgomery Improvement Association has been consistent throughout. We have expressed our willingness and desire to abide by the law as now written until it is changed. However, we think we have a right to insist that the law be fairly and reasonably administered. We have not asked for an abolition of segregation at this time, but we have only asked that all passengers be given that equality in seating which the law requires, and that this be brought about by loading busses from back to front with Negro passengers, and from front to back with white passengers on a first come - first served basis, without reservation of seats, and that no member of either race

be required to surrender his seat to a member of the other race unless another seat is available.

We repeat, as we have said before, there is no issue between the Negro citizens of Montgomery and the Montgomery City Lines that cannot be solved by negotiations in good faith between people of good will, and there is no legal barrier to such negotiations.

LAWS CONCERNING SEGREGATION ON BUSES

STATE LAWS

Title 48, Section 301 (2) A (2) APPLICATION OF ARTICLE - This article shall not be construed to apply to: Motor vehicles for hire while operating wholly within the limits of a city or incorporated town or within the police jurisdiction thereof; or between two or more incorporated towns or cities whose city limits join or are contiguous or whose police jurisdictions join or are contiguous.

Title 48, Section 301 (31a) SEPARATE ACCOMMODATIONS FOR WHITE AND COLORED RACES. - All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and for such refusal neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

Title 48, Section 301 (31b) OPERATORS OF PASSENGER STATIONS AND CARRIERS AUTHORIZED TO SEGREGATE WHITE AND COLORED RACES. - All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, Sec. 1, appvd. July 18, 1947.) (italics supplied)

CITY LAWS

Sec. 10. Separation of races--Required.

Every person operating a bus line in the city shall provide equal but separate accommodations for white people and Negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the Negroes, where there are both white and Negroes on the same car; provided, however, that Negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people. (italics supplied)

Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit. (Code 1938, Sections 603, 606.)

Sec. 11. Same--Powers of persons in charge of vehicle; passengers to obey directions.

Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant. (Code 1938, sec. 604.) (italics supplied)

AURELIA S. BROWDER, and SUSIE
MCDONALD, and JEANEATTA REESE,
and CLAUDETTE COLVIN, and MARY
LOUISE SMITH, by FRANK SMITH,
next friend, and other similarly
situated,

Plaintiffs

V.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
Members of the Board of Commiss-
ioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police,
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,

Defendants

IN THE UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION NO. 1147-N

Filed March 27, 1956
O. D. Street
Clerk

Now comes the Defendant, Montgomery City Lines, Inc., and for its answer to the Complaint as amended says:

1, 2, 3. The Defendant, Montgomery City Lines, Inc., neither admits nor denies the grounds of jurisdiction alleged in Paragraphs 1, 2 and 3.

4. The Defendant, Montgomery City Lines, Inc., admits the allegations of Paragraph 4.

5. The Defendant, Montgomery City Lines, Inc., admits the allegations of Paragraph 5 of the Complaint, that it is a private corporation organized and existing under the laws of the State of Alabama with its principal place of business in the City of Montgomery and admits the allegation that it is engaged in operating within the corporate limits and police jurisdiction of said city, a bus line for the transportation for hire pursuant to a franchise issued by said City of Montgomery which franchise requires that it abide by all applicable laws and ordinances.

6. The Defendant, Montgomery City Lines, Inc., admits the allegations of Paragraph 6 of the Complaint as amended that it has operated its buses as required by the Statutes and Ordinances set out in the Complaint requiring it to provide equal but separate accommodations for the white and colored races. It further admits the allegations of Paragraph 6 of the Complaint as amended that the Defendants, R. W. Cleere and James F. Blake, are employees and drivers of buses owned and operated by the

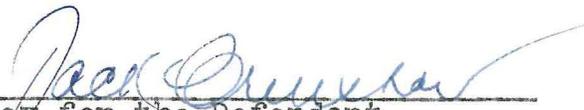
Montgomery City Lines, Inc. and have acted under orders from said Company to abide by all applicable laws and ordinances including the Statutes and Ordinances requiring the furnishing of separate but equal accommodations for the races. The Defendant, Montgomery City Lines, Inc., however alleges that its actions in the issuance of orders by it to the drivers with reference to furnishing such separate but equal accommodations has been solely for the purpose of complying with the requirements of the laws of the State of Alabama, Ordinances of the City of Montgomery and the requirements of its franchise that it abide by applicable laws and ordinances. It denies the other allegations of said paragraph and denies that the drivers of said buses are exercising the powers of police officers.

7. This Defendant is informed and believes and on such information and belief denies that the Defendants, Owens, Hitchcock and Poole, have issued or caused to be issued orders directing and requiring the segregation of negroes on the buses operated by the Montgomery City Lines, Inc. This defendant is without knowledge or information as to orders issued as to other bus lines sufficient to form a belief as to the truth of such allegations.

8. This paragraph alleges activities of parties other than the Defendant, Montgomery City Lines, Inc. This defendant admits that W. A. Gayle, Clyde Sellers and Frank Parks seek to enforce the statutes and ordinances set out in the Complaint and to compel and require the Plaintiffs and all other citizens of the City of Montgomery to comply with the provisions of those statutes and ordinances and that pursuant to their orders the plaintiffs and other citizens who fail to observe those statutes and ordinances are subject to arrest and confinement in jail; that said defendants and defendant, Goodwyn J. Ruppenthal, Chief of Police of said City of Montgomery, seek under said statutes and ordinances to compel obedience to the provisions thereof with respect to the segregation of the plaintiffs and other citizens as passengers on the Montgomery City Lines, Inc. and that a number of citizens have been arrested and/or arrested and confined to jail and/or fined and otherwise punished because of their insistence upon using the facilities of Montgomery City Lines, Inc. without being segregated thereon, including the individuals named in Paragraph 8, but as to the remainder of the allegations of said paragraph, this defendant alleges that it is with-

out knowledge or information sufficient to form a belief as to the truth of said averments.

8a, 9, 10 and 11. This Defendant, Montgomery City Lines, Inc., admits that part of Paragraph 9 of the Complaint as amended which alleges that since December 5, 1955 a large number of negro citizens of the City of Montgomery have refrained from making use of its transportation facilities, but as to the remainder of the allegations of said Paragraphs alleges that this Defendant is without knowledge or information sufficient to form a belief as to the truth of said averments.



Attorney for the Defendant
Montgomery City Lines, Inc.

JACK CRENSHAW

ATTORNEY AT LAW

FIRST NATIONAL BANK BUILDING
MONTGOMERY, ALABAMA

AURELIA S. BROWDER, and
SUSIE MCDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly
situated,

Plaintiffs

V.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
Members of the Board of Com-
missioners of the City of Montgomery
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
A corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,

Defendants

IN THE UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION No. 1147-N

FILED
MAR 27 1956
O. D. Street, Jr.
Clerk
By Deputy Clerk

Now come the Defendants, James F. Blake and Robert Cleere, and
for their answer to the Complaint say:

1, 2, 3. They neither admit nor deny the grounds of jurisdic-
tion alleged in Paragraphs 1, 2 and 3.

4. They admit the allegations of Paragraph 4.

5. They admit the allegations of Paragraph 5.

6. They admit the allegations of Paragraph 6 that they are em-
ployees and drivers of buses owned and operated by the Defendant, Mont-
gomery City Lines, Inc., and that as such employees they have acted pur-
suant to orders from said Company. They deny that as drivers of said
buses they are exercising the powers of police officers in the enforcement
of the Statutes and Ordinances attached as Exhibit "A" to the Complaint.
They admit the allegation that Montgomery City Lines, Inc. has operated
its buses on the basis of racial segregation as required by said Statutes
and Ordinances.

7, 8, 9, 10 and 11. These defendants are without knowledge or
information sufficient to form a belief as to the truth of the averments
of Paragraphs 7, 8, 9, 10 and 11.

Filed March 27, 1956
O'Dea
clerk

Jack O'Connell
Attorney for Defendants
James F. Blake and Robert Cleere

AURELIA S. BROWDER, and
SUSIE McDONALD, and JEANEATTA
REESE, and CLAUDETTE COLVIN, by
Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly
situated,

Plaintiffs

vs.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
Members of the Board of Com-
missioners of the City of Montgomery,
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individually and as Chief of Police
of the City of Montgomery, Alabama,
and,
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,
and
C. C. (JACK) OWEN, JIMMY HITCHCOCK,
and SIBYL POOL, as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 1147-N

FILED

MAR 21 1966

G. D. Street, Jr.
Clerk

By _____
Deputy Clerk

MOTION TO DISMISS

Come defendants, C. C. (Jack) Owen, Jimmy Hitchcock,
and Sibyl Pool, as members of the Alabama Public Service Commission,
and move this court, separately and severally, to dismiss the
action brought by plaintiffs, to dismiss and deny plaintiffs' motion
for temporary injunction, to dismiss and deny plaintiffs' appli-
cation for a declaratory judgment, and further to refuse to con-
vene a statutory court of three judges as sought in said complaint,
and as grounds therefor, these defendants assign the following,
separately and severally:

1. That it affirmatively appears that the application
for an injunction does not seek restraint from enforcement of a
state statute by a state officer so as to merit the convening of
a statutory three-judge court.

2. That the wrongs and damages complained of occurred
in the legal enforcement of the valid statutes of the State of
Alabama and of the valid ordinances of the City of Montgomery.

3. That this court should exercise its discretion in declining to grant a preliminary injunction because the alleged injuries to plaintiffs do not amount to irreparable injury which is clear, imminent and substantial.

4. That this court in the exercise of its sound discretion should decline to adjudicate the constitutional issue presented by this action and should dismiss the complaint on the ground that the issues tendered should be determined in the first instance by courts of the State of Alabama.

5. That the proper exercise of the equitable jurisdiction by this court dictates an abstention from a decision concerning the constitutionality of the acts of the Alabama Legislature here drawn in question, and that this court, actuated by a scrupulous regard for the rightful independence of state government, should refuse to exercise equitable jurisdiction in this cause.

6. There is no allegation of facts showing amount involved to be over Three Thousand Dollars (\$3,000.00).

7. It affirmatively appears that a declaratory judgment is not sought because the bill alleges a conspiracy.

8. There are no facts averred which show that the Alabama Public Service Commission has jurisdiction over buses which are being operated in the City of Montgomery, Alabama.

9. It appears from the face of the pleadings in this cause that neither the Alabama Public Service Commission nor the individual members thereof have any jurisdiction over the buses which are being operated within the City of Montgomery, Alabama, and its police jurisdiction.

10. The three-judge court is without jurisdiction to hear and determine this cause in that there are no state officers as parties defendant who have any jurisdiction over the buses being operated in the City of Montgomery, Alabama, and its police jurisdiction.

11. That this court should avoid passing upon the constitutionality of Title 48, Section 301 (301a), Code of Alabama 1940, as amended, until such time as the Alabama courts may hold that the Alabama Public Service Commission has jurisdiction over the buses which are being operated in the City of Montgomery, Alabama, and its police jurisdiction.

12. There is no justiciable controversy presented.

13. There are no facts averred which show any right on the part of plaintiffs to a statutory three-judge court.

14. The complaint fails to set forth any orders of the Alabama Public Service Commission requiring the segregation of the races on buses in the City of Montgomery, Alabama, and its police jurisdiction.

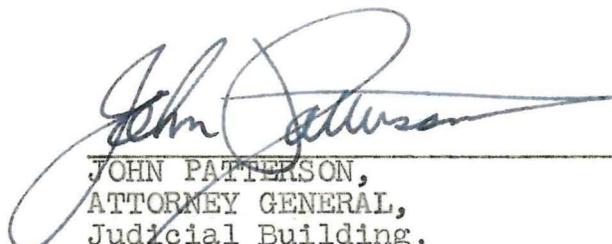
15. It affirmatively appears from the allegations of the complaint that the City of Montgomery, Alabama, and not the Alabama Public Service Commission, has jurisdiction over the operation of buses in said city and its police jurisdiction.

16. Said complaint fails to state a cause of action upon which relief can be granted.

17. There are no allegations of fact which show that the Alabama Public Service Commission has issued or caused to be issued any orders directing and requiring the segregation of the races on buses which are now being operated in the City of Montgomery, Alabama, and its police jurisdiction.

WHEREFORE, the defendants, separately and severally, move this court to dismiss this action for lack of jurisdiction and without waiving the objections to the jurisdiction of the court, to dismiss this action for failure to state a cause upon which relief can be granted. These defendants further move to dismiss the complaint; to dismiss and deny plaintiffs' application for preliminary injunction; to dismiss and deny plaintiffs'

application for a declaratory judgment; to dismiss and deny plaintiffs' application for the convening of a statutory three-judge court.



JOHN PATTERSON,
ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



WILLIAM N. McQUEEN,
ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



GORDON MADISON,
ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.

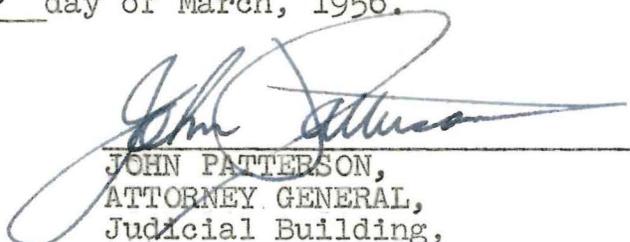


WM. F. BLACK,
State Office Building,
Montgomery, Alabama.

ATTORNEYS FOR DEFENDANTS, C. C.
(JACK) OWEN, JIMMY HITCHCOCK, AND
SIBYL POOL, AS MEMBERS OF THE
ALABAMA PUBLIC SERVICE COMMISSION.

I hereby certify that I have delivered a copy of the foregoing motion to dismiss to Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This the 26 day of March, 1956.



JOHN PATTERSON,
ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION



CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, and
Susie McDonald, and Jeannetta
Reese, and Claudette Colvin, by
Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated,

Plaintiffs

v.

W. A. Gayle, Clyde Sellers and Frank Parks,
individually and as members of the Board of
Commissioners of the City of Montgomery,
Alabama, and Goodwyn J. Ruppenthal, Individual-
ly and as Chief of Police of the City of
Montgomery, Alabama,
and,
The Montgomery City Lines, Inc., A Corporation,
and James F. Blake, and Robert Cleere,
Defendants

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

Attorney Fred D. Grey,

plaintiff's attorney , whose address is

113 Monroe Street,
Montgomery, Alabama

an answer to the complaint which is herewith served upon you, within Twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

O. D. Street, Jr.

Clerk of Court.

Annie Schooler
Deputy Clerk.

Date: March 8, 1956.

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 8th day of March 1956,

I received this summons and served it together with the complaint herein as follows: on March 12, 1956

I served a copy thereof, with copy of the Original & Amended complaint attached on C. C. (Jack) Owens, State Office Building, Montgomery, Alabama, at 10:AM.

Further executed on March 12, 1956 by serving a copy thereof, with a copy of the Original & Amended complaint attached on Sibyl Pool, State Office Building, Montgomery, Alabama at 10:AM.

Further executed on March 12, 1956 by serving a copy thereof, with a copy of the Original & Amended complaint attached on Jimmy Hitchcock at 10:10AM.

MARSHAL'S FEES

Travel \$ 20
Service 6.00
6.20

CHARLES S. PRESCOTT

United States Marshal.

By John S. Johnson Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of , 19

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.

United States District Court

FOR THE

v.

SUMMONS IN CIVIL ACTION

days

Returnable not later than

after service.

RETURNED AND FILED

MAR 16 1956

O. D. STREET, JR. CLERK

Attorney for Plaintiff.

FPI-LK-9-27-54-80M-1393

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

AURELIA S. BROWDER, ET AL

VS.

W. A. GAYLE, ET AL

|

|

|

CIVIL ACTION NO. 1147-N

The Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, hereby designate the Honorable Richard T. Rives, United States Circuit Judge, and the Honorable Seybourn H. Lynne, United States District Judge for the Northern District of Alabama, to serve with Judge Johnson as members of, and with him to constitute, the said court to hear and determine the action.

WITNESS MY HAND this 12th day of March, 1956.

Joseph C. Hutcheson Jr.

Chief Judge, Fifth Circuit

(Injunctions - Three Judge Courts - Designation, 28 USCA Sec. 2284)

Filed March 15, 1956
O. D. Street Jr.
Clerk.

AURELIA S. BROWDER, and
SUSIE MCDONALD, and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARY LOUISE SMITH
by Frank Smith, next friend, and
others similarly situated,

Plaintiffs

VS.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and as
members of the Board of Commis-
sioners of the City of Montgomery,
Alabama, and GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery, Alabama,
and
THE MONTGOMERY CITY LINES, INC.,
A corporation, and JAMES F. BLAKE,
and ROBERT CLEERE,
and
C. C. (JACK) OWENS, JIMMIE HITCHCOCK
and SYBIL POOL as members of the
Alabama Public Service Commission,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 1147-N

FILED

APR 19 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

ANSWER

Come defendants, C. C. (Jack) Owen, Jimmy Hitchcock
and Sibyl Pool, as members of the Alabama Public Service Commis-
sion, and, without waiving their motion to dismiss but expressly
insisting thereon, for answer to the complaint as last amended,
say:

1. That this cause fails to state a claim against these
defendants upon which relief can be granted.
2. These defendants deny each and every allegation con-
tained in paragraphs 1(a) through 1(c) of the complaint.
3. These defendants deny each and every allegation con-
tained in paragraph 2 of the complaint.
4. These defendants deny each and every allegation con-
tained in paragraph 3 of the complaint.
5. These defendants are without knowledge or informa-
tion sufficient to form a belief as to the truth of the averments
contained in paragraph 4 of the complaint and demand strict proof
thereof.

6. These defendants admit the allegations contained in paragraph 5 of the complaint.

7. These defendants deny that equal but separate accommodations for the white and Negro races on buses operated in the City of Montgomery, Alabama, and its police jurisdiction is in violation of the rights guaranteed to plaintiffs and other Negro citizens under the Constitution and laws of the United States. These defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments contained in paragraph 6 of the complaint and demand strict proof thereof.

8. These defendants admit that they are members of the Alabama Public Service Commission and are made parties to this cause in their official capacity as such. These defendants deny all other allegations of paragraph 7 of the complaint.

9. These defendants are informed and believe and on such information and belief allege that the defendants named in paragraph 8 of the complaint have sought to enforce by legal means constitutional and valid statutes and ordinances providing for separate but equal seating arrangements on buses operated in the City of Montgomery, Alabama, and its police jurisdiction. These defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments contained in paragraph 8 of the complaint and demand strict proof thereof.

10. These defendants deny the allegations of paragraph 8A of the complaint.

11. These defendants deny the allegations of paragraph 9 of the complaint.

12. These defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10 of the complaint and demand strict proof thereof.

13. Defendants deny each and every allegation contained in paragraph 11.

For further answer to the complaint as last amended, these defendants aver that the three-judge court in this cause is without jurisdiction to hear and determine this cause, in that the only State officers who are parties defendant are these defendants and they, in their official capacities as members of the Alabama Public Service Commission, have no jurisdiction over, and have issued no orders relating to, the separation of the races on buses operated wholly within the City of Montgomery, Alabama, and its police jurisdiction.

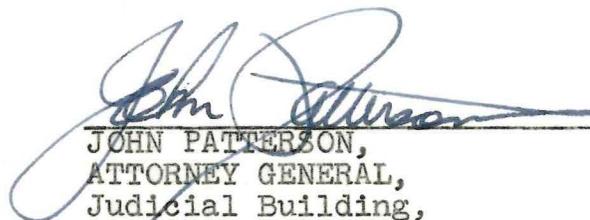
Further answering, these defendants aver that they are not proper defendants to this cause and no cause of action is stated against them, in that the complaint fails to aver in any place that these defendants are charged with the duty of enforcing statutes or ordinances relating to the separation of the races on buses operated wholly within the City of Montgomery, Alabama, and its police jurisdiction, or that they have issued any orders directing and requiring the segregation of the races on buses operated as aforesaid.

For further answer, these defendants aver that they are informed and believe and on such information and belief aver that separate but equal facilities are provided for the white and Negro races on all buses operated within the City of Montgomery, Alabama, and its police jurisdiction; that such separation promotes the general welfare of both races, and tends to protect each from violence and possible bloodshed; that there are no sociological and psychological factors present in this case which would tend to require integration on buses, but to the contrary the general welfare of both races and any sociological and psychological factors present require and demand the separation of the races on buses.

For further answer, these defendants aver that in view of the recent events in Alabama relating to integration of the

racess this court cannot turn the clock back to May 17, 1954, when Brown v. Board of Education of Topeka, 347 U. S. 483, was decided, even if that decision is thought to be applicable to this case; that any sociological and psychological factors existing today require and demand that separate but equal facilities be provided on buses operated in the City of Montgomery, Alabama, and its police jurisdiction, to the end that both races may live in peace, free from fear, turmoil and possible violence which retards the progress, prosperity and well being of both the white and Negro races.

And having fully answered plaintiffs' complaint as last amended, these defendants pray that they be discharged and said suit be dismissed as to them, with their reasonable costs incurred.



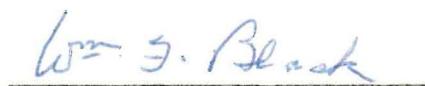
JOHN PATTERSON,
ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



WILLIAM N. McQUEEN,
ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



GORDON MADISON,
ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



WM. F. BLACK,
State Office Building,
Montgomery, Alabama.

ATTORNEYS FOR DEFENDANTS, C. C. (JACK)
OWEN, JIMMY HITCHCOCK AND SIBYL POOL,
AS MEMBERS OF THE ALABAMA PUBLIC
SERVICE COMMISSION.

I hereby certify that I have mailed, properly stamped and addressed, a copy of the above and foregoing answer to Charles D. Langford and Fred D. Gray, 113 Monroe Street, Montgomery, Alabama, attorneys for plaintiffs, on this the 19th day of April, 1956.


GORDON MADISON,
ASSISTANT ATTORNEY GENERAL.

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 1147-N

AURELIA S. BROWDER, ET ALS,

Plaintiffs

vs.

W. A. GAYLE, ET ALS,

Defendants

ANSWER OF C. C. (JACK) OWEN,
JIMMY HITCHCOCK AND SIBYL
POOL, AS MEMBERS OF THE
ALABAMA PUBLIC SERVICE COM-
MISSION.

No.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

W. A. GAYLE, CLYDE SELLERS and FRANK PARKS, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and GOODWYN J. RUPPENTHAL, individually and as Chief of Police of the City of Montgomery, Alabama,

Appellants,

v.

AURELIA S. BROWDER, and SUSIE McDONALD and CLAUDETTE COLVIN, by Q. P. Colvin, next friend, and MARY LOUISE SMITH, by Frank Smith, next friend, and others similarly situated,

Appellees.

On Appeal From the United States District Court
For the Middle District of Alabama, Northern Division

JURISDICTIONAL STATEMENT

WALTER J. KNABE,
511 Hill Building,
Montgomery, Alabama,
Counsel for Appellants.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No.

W. A. GAYLE, CLYDE SELLERS and FRANK PARKS, indi-
vidually and as members of the Board of Commis-
sioners of the City of Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL, individually and as
Chief of Police of the City of Montgomery, Ala-
bama,

Appellants,

v.

AURELIA S. BROWDER, and SUSIE McDONALD and CLAU-
DETTE COLVIN, by Q. P. Colvin, next friend, and
MARY LOUISE SMITH, by Frank Smith, next friend,
and others similarly situated,

Appellees.

On Appeal From the United States District Court
For the Middle District of Alabama, Northern Division

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Middle District of Alabama, Northern Division, entered on June 19, 1956.

This judgment invalidated certain ordinances of the City of Montgomery¹ and statutes of Alabama² requiring segregation of the white and Negro races in buses operated in the City of Montgomery as violative of the Fourteenth Amendment of the Constitution of the United States; and it permanently enjoined and restrained Appellants from enforcing these statutes and ordinances and any other statutes and ordinances which require Appellees or other Negroes similarly situated to submit to segregation in the use of the bus transportation facilities in the City of Montgomery, Alabama, and from doing any acts or taking any action to require the Montgomery City Lines, Inc., a Defendant below, or its drivers, or any other public bus transportation facility, or its drivers, from enforcing such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the Middle District of Alabama, Northern Division is unreported. The opinion below, findings of fact, conclusions of law, and judgment are attached hereto as Appendix A.

¹ Chapter 6, Sections 10 and 11, Code of City of Montgomery, 1952.

² Section 301 (31a, 31b and 31c) Title 48, Code of Alabama, 1940, as amended.

JURISDICTION

Appellees brought this suit below under Title 28, United States Code, Sections 1331 and 1343 (3) and under Title 42, United States Code, Sections 1981 and 1983. The judgment of the District Court was entered on June 19, 1956, and notice of appeal was filed in that court on June 29, 1956. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101 (b).

QUESTIONS PRESENTED

1. Where municipal ordinance and state statute require, under criminal penalty, that operators of public bus lines furnish this transportation facility to members of the white and Negro races on a separate but equal basis, and prohibit under similar penalties integration of the races on such transportation facilities:

(a) Does a federal district court at the suit of certain Negro citizens of this municipality have jurisdiction to enjoin the enforcement of these ordinances and statutes on constitutional grounds?

(b) Is there any federal equity jurisdiction to enjoin the enforcement of these state and municipal criminal laws in this manner in the absence of a showing of threatened irreparable injury both great and immediate to the suitor?

(c) Even if the federal district court has such jurisdiction, should it as a matter of comity withhold its exercise where there is an adequate state procedure for testing the validity of these laws, with ultimate review by the Supreme Court of the United States?

(d) Is there federal equity jurisdiction in such a suit to enjoin the enforcement of these ordinances and statutes?

2. Where the public bus facilities afforded members of the white and Negro races in the City of Montgomery are unquestionably equal, but for separateness, is enforced separation of the races pursuant to statutory requirement *per se* a violation of the Fourteenth Amendment of the Constitution of the United States?

CONSTITUTION AND STATUTES INVOLVED

Constitution of the United States, Fourteenth Amendment, Section 1.

United States Code, Title 28, Sections 2281, 2284, 1253, 2101 (b).

United States Code, Title 42, Sections 1981 and 1983.

Title 37, Sections 587, 588 and 593, Code of Alabama of 1940, as amended.

Title 48, Sections 301 (31a, 31b and 31c), Code of Alabama of 1940, as amended.

Code of the City of Montgomery, 1952, Chapter 6, Sections 10 and 11; Chapter 1, Section 6.

These statutes and Constitutional provisions are set forth in Appendix B hereto.

STATEMENT

These Appellants are municipal officials of the City of Montgomery, and as such are charged with the enforcement of ordinances relating to public transporta-

tion. Among these ordinances are Chapter 6, Sections 10 and 11, Code of the City of Montgomery, 1952, which require that, "(E)very person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate white people from the negroes, where there are both white and negroes on the same car; . . ."

Section 11 of this City Code confers on employees in charge of buses operated in the City of Montgomery the power of police officers for the purpose of carrying out the provisions of Section 10. Criminal penalties for the violation of these Sections are provided in Chapter 1, Section 6, City Code of 1952.

State statutes—perhaps inapplicable within municipalities—require that races be separated on public transportation facilities and impose criminal sanctions for their violation. Title 48, Sections 301(2)A(2), and 301 (31a, 31b and 31c), Code of Alabama of 1940, as amended.

Appellees invoked the jurisdiction of a district court of three judges for the purpose of obtaining a judicial declaration that these ordinances and statutes violated the Constitution of the United States and a permanent injunction against the enforcement of these or similar statutes. Appellees alleged that these state and local requirements violated the Fourteenth Amendment of the Constitution of the United States and denied them liberty without due process of law; equal protection of the laws; and abridged their privileges and immunities.

Appellees are four Negro citizens of Montgomery. The Court below found that each of them has "either been required by a bus driver or by the police to comply with said segregation laws or has been arrested and fined for her refusal so to do." Moreover, "the Plaintiffs, along with most other Negro citizens of the City of Montgomery, have since December 5, 1955, and up to the present time, refrained from making use of the transportation facilities provided by Montgomery City Lines, Inc. Plaintiffs and other Negroes desire and intend to resume the use of said buses if and when they can do so on a nonsegregated basis without fear of arrest." (Appendix A, p. 4a).

The Court below also found that Appellants and the operators of the Montgomery bus lines intended to enforce the statutes and ordinances requiring separate but equal accommodations, and it found that "Without dispute the evidence is to the effect that, other than being separate, such accommodations are equal." (Appendix A, p. 5a).

Nevertheless the Court below held that these enactments violated the Fourteenth Amendment of the Constitution of the United States in that their enforcement deprived Appellees of liberty without due process of law and denied to them the equal protection of the laws.

There was testimony below that these same ordinances had been enforced against another Negro citizen of Montgomery—Rosa Parks. (R.) Her conviction in the municipal court had been appealed to the Circuit Court of Montgomery County, Alabama, and thence to the Court of Appeals of Alabama, where it is now pending. (R.) The Constitutional

issues presented at bar were also raised in the Parks case.

There was also testimony that two of the Appellees, on prior occasions, had been convicted and fined for violation of the ordinances now drawn in question. (R.) Though the statutes of Alabama provide an appeal to the Circuit Court of Montgomery County, Alabama, and then to the appellate courts of Alabama,³ neither of these parties sought review of their convictions on these occasions. Of course, ultimate review on any federal question was available in this Court.

THE QUESTIONS ARE SUBSTANTIAL

This appeal involves procedural and substantive questions long considered basic in the accommodation of federal and state judicial systems and in the application of the Fourteenth Amendment to the police power of cities and states.

I

The Judgment Below Departs From Principles of Federal Court Procedure Long Considered Essential to a Proper Accommodation of State and Federal Courts.

This appeal seeks review of a failure by the Court below to apply fundamental procedural principles to this case. The district court of three judges should have dismissed this action; or, at least, stayed it pending appropriate suit by Appellees in the Alabama state courts.

1. The Court below has enjoined the application of criminal laws which require segregation of whites and

³ Title 37, Sections 587, 588 and 593, Code of Alabama, 1940, as amended.

Negroes on public buses in Montgomery. Thus, its judgment runs squarely counter to *Douglas v. City of Jeannette*, 319 U. S. 157 (1943).

There certain Jehovah's Witnesses sued in a federal district court in Pennsylvania to restrain threatened prosecution of them by the City of Jeannette and its officials for violation of a city ordinance which prohibited the solicitation of orders for merchandise without first procuring a license from the city authorities and paying a license tax.

The Jeannette ordinance contained criminal penalties for its violation. The petitioners cited prior arrests and convictions by the municipal authorities of other Jehovah's Witnesses for distributing religious literature without the permits required by the ordinance, and complained that continued enforcement threatened them with arrests and prosecutions—in violation of their constitutional rights of freedom of press and religion.

This Court held that even though a federal district court had undoubted jurisdiction to hear and decide the question of the constitutional validity of the Jeannette ordinance, in the absence of a showing of irreparable injury, there was "no ground for supposing that the intervention of a federal court, in order to secure petitioner's constitutional rights, will be either necessary or appropriate." (319 U. S. at 165) The district court, so this Court held, should not have exercised its equity powers to interfere by injunction with threatened criminal prosecutions in a state court.

Moreover, it is especially noteworthy, that this Court in a companion case, *Murdock v. Pennsylvania*, 319

U. S. 105 (1943), decided on the same day, held the same underlying ordinance, as applied in an identical context, to be an unconstitutional abridgement of free speech, press and religion. Thus, this Court demonstrated the overriding importance and substantiality of the procedural rule of *Douglas v. Jeannette*.

This Court stated:

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted by federal district courts only in obedience to Congressional legislation in conformity to the Judiciary Article of the Constitution. Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds. . . .

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. . . . Where the

threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparably injury 'both great and immediate.'" (319 U. S. at 162-164)

The parallel between this case and *Douglas v. Jeannette* is exact. Federal district courts enjoined the enforcement of local laws with criminal sanctions on the ground that the enactments violated the Constitution of the United States as applied to the respective complainants.

State appellate procedures to review convictions for violations of the enactments were available in both cases.

Prosecutions in the state courts have been instituted against other persons arising out of violations of the same enactments in similar factual contexts.

Neither the lower court in *Jeannette* nor the court below in the case at bar found a danger of irreparable injury "both great and immediate" to Appellees or others similarly situated from threatened prosecutions under state and local laws.⁴ Indeed, two of the Appel-

⁴ While unnecessary for this Court's consideration of this appeal, it seems apposite to point out that it would be extremely difficult, if not impossible, for any Court to find irreparable injury "both great and immediate" resulting from threatened prosecution under statutes and ordinances drawn in question in this case. The maxi-

lees had an opportunity to appeal from prior convictions under state law and thereby test the validity of underlying ordinances, and chose not to do so.

Actually, the case at bar is a stronger one for application of the *Jeannette* principle than the *Jeannette* case itself. In *Jeannette*, this Court had decided on the same day that the underlying ordinances drawn in question in that case violated guaranties of freedom of speech, press and religion afforded by the Constitution of the United States. Despite this contemporaneous holding, the Court nevertheless dismissed the Douglas suit in the federal district court on the ground that his remedies had to be pursued through the state courts of Pennsylvania.

Moreover, *Douglas v. Jeannette* involved—as this case does not—an alleged abridgement of freedom of speech. This freedom has been accorded, in the opinion of some of the members of this Court, a preferred position among Constitutional guaranties. See *Kovacs v. Cooper*, 336 U. S. 77 (1949).⁵

The decision below conflicts also with similar enunciations of the *Jeannette* doctrine in other decisions of this Court.

imum penalty for violation of the relevant city ordinances is "a fine of not less than one nor more than one hundred dollars, or by imprisonment in jail or at hard labor for a period of not exceeding six months, or by both such fine and imprisonment, at the discretion of the recorder" (Chapter 1, Section 6, Code of the City of Montgomery, 1952). The maximum penalty for violation of the relevant state statutes is a fine of "not more than five hundred dollars for each offense" (Title 48, Section 301 (31a), Code of Alabama, 1940, as amended).

⁵ Compare the opinion of Mr. Justice Reed (336 U. S. 77, 88) with the opinion of Mr. Justice Frankfurter (336 U. S. 77, 90).

See e. g. *Stefanelli v. Minard*, 342 U. S. 117, 123 (1951):

“(T)he federal equity power must refrain from staying state prosecutions outright to try the simple question of the validity of the statute on which the prosecution is based. . . .”

See also *Burford v. Sun Oil Co.*, 319 U. S. 315, 333, n. 29 (1943):

“In recent years, this Court has refused to permit the exercise of federal equity jurisdiction to enjoin the enforcement of State criminal statutes.”

Of similar import are *Beal v. Missouri Pacific R. Co.*, 312 U. S. 45 (1941); *Watson v. Buck*, 313 U. S. 387 (1941); *Spielman Motor Co. v. Dodge*, 295 U. S. 89 (1935).

2. The Court below should have abstained from exercising jurisdiction in this case because the statutes and ordinances involved concern vastly important areas of state and local administration, and enunciate broad legislative policy in this regard. Appellate review of convictions under these enactments is available in the Alabama state courts.

Most apposite are the recent cases of *Alabama Public Service Commission v. Southern Railway*, 341 U. S. 341 (1951) and *Burford v. Sun Oil Co.*, 319 U. S. 315 (1943), in which the Court answered affirmatively the question:

“Assuming that the federal court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?” (341 U. S. at 345)

In *Southern*, the railroad petitioned the Alabama Public Service Commission to discontinue service on certain trains which it was allegedly operating at a loss. Under Alabama law, discontinuance could not be undertaken without permission of the Alabama Commission.

The permission was denied, and *Southern*, instead of pursuing its remedies in the Alabama courts, sued in the federal district court, alleging diversity of citizenship and the presence of a federal question arising out of its contention that required continuance of operation of the lines at a loss constituted a confiscation of its property in violation of the Fourteenth Amendment of the Constitution of the United States.

A federal district court of three judges assumed jurisdiction and enjoined the Commission from taking any steps to enforce its order, on the ground that confiscation did in fact exist.

This Court reversed the district court, holding that even though that court had jurisdiction, the case was not a proper one for its exercise (341 U. S. 341). This Court commented:

“Appellee takes the position, adopted by the court below, that whenever a plaintiff can show irreparable loss caused by an allegedly invalid state administrative order ripe for judicial review in the state courts the presence of diversity of citizenship or a federal question opens the federal courts to litigation as to the validity of that order, at least so long as no action involving the same subject matter is actually pending in the state courts. But, it by no means follows from the fact of district court jurisdiction that such jurisdiction must be exercised in this case.” (341 U. S. at 344f)

The *Southern* case is a culmination of judicially conceived solutions to the vexing problem of how to limit the authority of lower federal courts where matters predominantly of state concern are at issue. This Court found that equitable intervention in that case to enjoin enforcement of a state administrative order had not exhibited “the scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts.” (Quoted 341 U. S. at 349) Ordinary rules of comity had to be invoked to avoid useless friction with Alabama administrative policies. And *Southern* was told to pursue its remedies in the state courts.

It is noteworthy that the *Southern* case did not involve a new or undefined state statute.

The Court below rejected the *Southern* case as inapposite because an alleged deprivation of “constitutional civil rights” was involved, and the federal courts “have a responsibility as heavy as that which rests on the state courts” for the protection of these rights. (Appendix A, p. 9a)

It is respectfully submitted that the court below imposed an unwarranted limitation on the applicability of the *Southern* doctrine. Indeed, this Court has made it perfectly plain that the doctrine does apply to cases arising under the Civil Rights Act. In *Stefanelli v. Minard*, 342 U. S. 117, 120 (1951) this Court stated:

“For even if the power to grant the relief here sought may fairly and constitutionally be derived from the generality of language of the Civil Rights Act, to sustain the claim would disregard the power of courts of equity to exercise discretion

when, in a matter of equity jurisdiction, the balance is against the wisdom of using their power. Here the considerations governing that discretion touch perhaps the most sensitive source of friction between States and Nation, namely, the active intrusion of the federal courts in the administration of the criminal law for the prosecution of crimes solely within the power of the States.

“We hold that the federal courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure. The maxim that equity will not enjoin a criminal prosecution summarizes centuries of weighty experience in Anglo-American law. It is impressively reinforced when not merely the relations between coordinate courts but between coordinate political authorities are in issue. The special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law, has been an historic concern of congressional enactment. . . . This concern has been reflected in decisions of this Court, not governed by explicit congressional requirement, bearing on a State’s enforcement of its criminal law.”

While *Stefanelli* apparently combines the underlying considerations of the *Southern* case and of *Douglas v. Jeannette*, both considerations are present in the case at bar. The Court below has enjoined the enforcement of state criminal statutes, and has not exercised its equitable discretion in such a manner as to withhold its jurisdiction so that constitutional issues may be tried out in the state courts with ultimate review in this Court.

3. Another basic procedural doctrine presented here—intimately related to the doctrine of the *Southern* case—dictates federal court abstention where the con-

stitutionality of an ill-defined state statute is drawn in question. See *Railroad Commission of Texas v. Pullman Company*, 312 U. S. 496 (1941); *Chicago v. Fieldcrest Dairies*, 316 U. S. 168 (1942); *Spector Motor Company v. McLaughlin*, 323 U. S. 101 (1944); and *A. F. of L. v. Watson*, 327 U. S. 582 (1946).

The court below declined to apply this doctrine in a case where concededly the statutes and ordinances involved were presently being tested in the state courts in the course of the prosecution of another Negro person.

The doctrine of the *Pullman* case is a judicially devised method of effecting a limited federal stay to permit state adjudication of undecided local questions which might render unnecessary a decision of federal questions. Since there is now a state proceeding, the court below should have declined to exercise jurisdiction of this proceeding pending state court adjudication.

II

The Decision Below Holding That Separate Accommodations for White and Negro Passengers on Public Buses Violate the Constitution of the United States, Even Though Those Facilities Are Equal, Is in Direct Conflict With Decisions of This Court.

The Court below found that "without dispute the evidence is to the effect that, other than being separate, such accommodations (that is, on public buses), are equal." (Appendix A, p. 5a) Despite such equality, the Court below held that enforcement of separate-ness violated the constitutional guaranties afforded by the Fourteenth Amendment of the Constitution of the United States.

The holding below conflicts squarely with *Plessy v. Ferguson*, 163 U. S. 537 (1896), where this Court held that a Louisiana statute requiring railway companies to provide separate but equal accommodations for white and colored races did not conflict with the Fourteenth Amendment.

The Court below recognized that its decision conflicted with *Plessy v. Ferguson*. Its holding was based on supposed indications of this Court in the School Segregation Cases—*Brown v. Board of Education*, 347 U. S. 483 (1954) and *Bolling v. Sharpe*, 347 U. S. 497 (1954)—that it would no longer follow *Plessy* in any case.

The Court below sought to draw support for its theory from more recent decisions of this Court involving segregation in municipal recreational centers. *Dawson v. Baltimore*, 350 U. S. 877 and *Holmes v. Atlanta*, 350 U. S. 879.

But this Court very carefully restricted its departure from *Plessy v. Ferguson* to the field of public education. It held that "Separate educational facilities are inherently unequal." (*Brown v. Board of Education*, 347 U. S. 483, 495)

Moreover, this Court observed that *Plessy* involved "not education but transportation." (*Brown v. Board of Education*, 347 U. S. 483, 491)

Surely if this Court in the School Segregation Cases had intended to deny to *Plessy* any further judicial efficacy it would have said so in no uncertain terms.⁶

⁶ When this Court has overruled decisions in the past, it has done so most explicitly. See *Murdock v. Pennsylvania*, 319 U. S. 105, 117: "The judgment in *Jones v. Opelika* has this day been

The intangible factors which this Court considered most relevant in the School Segregation Cases, are not present with equal force in this case. Moreover, certainly in so mundane a field as public transportation, if a State provides equal physical facilities and equality in other tangible factors, it should be left to its own devices so far as police power and legislation are concerned. For this reason, it is submitted, this Court saw fit to leave *Plessy* its continued vigor in the field of intrastate transportation.

A substantial question regarding the continued efficacy of *Plessy* is involved in the decision below. Moreover, the court below reached a wrong conclusion on this question.

It is submitted that the decision of the district court below is in error as pointed out, and that the questions presented by this appeal are substantial and are of great public importance.

Respectfully submitted,

WALTER J. KNABE,
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Montgomery, Alabama,
Attorney for Appellants.

* * * * *

vacated. Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature.”

See also, *Erie RR Co. v. Tompkins*, 304 U. S. 64, 69 (1938): “The question for decision is whether the oft challenged doctrine of *Swift v. Tyson* shall now be disapproved.” This Court decided that it should be.

I certify that I have served a copy of the foregoing jurisdictional statement upon Messrs. Fred D. Gray and Charles D. Langford, attorneys for appellees, by depositing the same in a United States Post Office with first-class postage prepaid addressed to them at 131½ Monroe Street, Montgomery, Alabama.

.....
WALTER J. KNABE.

APPENDIX

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

No. 1147

AURELIA S. BROWDER, and SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next friend, and MARY LOUISE
SMITH, by Frank Smith, next friend, and others simi-
larly situated,

Plaintiffs,

vs.

W. A. GAYLE, CLYDE SELLERS and FRANK PARKS, individ-
ually and as members of the Board of Commissioners
of the City of Montgomery, Alabama, and GOODWYN
J. RUPPENTHAL, individually and as Chief of Police of
the City of Montgomery, Alabama, and THE MONTGOM-
ERY CITY LINES, INC., a Corporation, and JAMES F.
BLAKE, and ROBERT CLEERE, and C. C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

Defendants.

Before RIVES, *Circuit Judge*, and LYNNE and JOHNSON,
District Judges:

RIVES, *Circuit Judge:*

STATEMENT OF THE CASE

The purpose of this action is to test the constitutionality of both the statutes of the State of Alabama¹ and the ordi-

¹ Title 48, § 301 (31a,b,c), Code of Alabama of 1940, as amended, which provide:

“Sec. 301(31a). Separate accommodations for white and colored races.—All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and, if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and, for such refusal, neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

“The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

“Sec. 301(31b). Operators of passenger stations and carriers authorized to segregate white and colored races.—All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle.

nances of the City of Montgomery² which require the segregation of the white and colored races on the motor buses of the Montgomery City Lines, Inc., a common carrier of passengers in said City and its police jurisdiction.

For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, § 1, appvd. July 18, 1947.)

“Sec. 301(31c). Failure to comply with rules and regulations as to segregation of white and colored races.—It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulation, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company, or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles carrying passengers for hire, of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation, or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for such offense. (1947, p. 40, § 2, appvd. July 18, 1947.)”

² Section 10, Chapter 6, Code of the City of Montgomery, 1952, which provides:

“Every person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the negroes, where there are both white and negroes on the same car; provided, however, that negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people.

“Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit.”

Section 11 of Chapter 6, Montgomery City Code of 1952, further provides:

“Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant.”

The plaintiffs are four Negro citizens who bring this action for themselves and on behalf of all other Negroes similarly situated.³ The defendants are the members of the Board of Commissioners and the Chief of Police of the City of Montgomery, the members of the Alabama Public Service Commission, The Montgomery City Lines, Inc., and two of its employee drivers.

Each of the four named plaintiffs has either been required by a bus driver or by the police to comply with said segregation laws or has been arrested and fined for her refusal so to do. The plaintiffs, along with most other Negro citizens of the City of Montgomery, have since December 5, 1955, and up to the present time, refrained from making use of the transportation facilities provided by Montgomery City Lines, Inc. Plaintiffs and other Negroes desire and intend to resume the use of said buses if and when they can do so on a non-segregated basis without fear of arrest.

The members of the Board of Commissioners and the Chief of Police of the City of Montgomery in their answers to the complaint admit "that they seek to enforce the statutes of the State of Alabama and the ordinances of the City of Montgomery, Alabama", and further aver that "segregation of privately owned buses within cities within the State of Alabama is in accordance with the laws of the State of Alabama and the City of Montgomery."

The members of the Alabama Public Service Commission deny that they, in their official capacities as such members have any jurisdiction over, or have issued any orders relating to the separation of the races on buses operated wholly within the City of Montgomery and its police jurisdiction. On information and belief they allege that the members of the Board of Commissioners and the Chief of Police of said City "have sought to enforce by legal means

³ Rule 23(a), F. R. C. P.

constitutional and valid statutes and ordinances providing for separate but equal seating arrangements on buses operated in the City of Montgomery, Alabama, and its police jurisdiction".

The Montgomery City Lines, Inc., admits that it has operated, and pursuant to orders of a State Court, continues to operate "its buses as required by the Statutes and Ordinances set out in the Complaint requiring it to provide equal but separate accommodations for the white and colored races". Without dispute the evidence is to the effect that, other than being separate, such accommodations are equal.

The defendants, Blake and Cleere, admit they are employees of the Montgomery City Lines and drivers of its buses, that as such they have acted pursuant to orders of said Company which "has operated its buses on the basis of racial segregation as required by said statutes and ordinances". They deny that as drivers of said buses they are exercising the powers of police officers in the enforcement of said statutes and ordinances.

The complaint prays for the convening of a three-judge district court as provided by Title 28 of the United States Code, § 2284; for a declaratory judgment as to whether the enforcement of said statutes and ordinances abridges the privileges and immunities of plaintiffs as citizens of the United States, or deprives them of liberty without due process of law, or denies to them the equal protection of the law, as secured by the Fourteenth Amendment to the Constitution of the United States,⁴ and the rights and privileges

⁴ Fourteenth Amendment, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

secured to them by Title 42, United States Code, §§ 1981 and 1983.⁵ The complaint further prays that the defendants be both temporarily and permanently enjoined from enforcing the statutes and ordinances claimed to be unconstitutional and in conflict with said Federal statutes.

FEDERAL JURISDICTION

Federal jurisdiction is invoked under Title 28, United States Code, §§ 1331 and 1343 (3),⁶ and under Title 42, United States Code, §§ 1981 and 1983, footnote 5, *supra*. We think that the validity of both the State statutes and the City ordinances is in question, but if only the City ordinances are involved, Federal jurisdiction would still

⁵“Section 1981. Equal rights under the law.

“All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

“Section 1983. Civil action for deprivation of rights.

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, but in equity, or other proper proceeding for redress.”

⁶“Section 1331. Federal question; amount in controversy.

“The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.”

“Section 1343. Civil rights.

“The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.”

exist because the Constitution and statutes of Alabama authorize the adoption of City ordinances “not inconsistent with the laws of the State”,⁷ and because the constitutional phrase “equal protection of the laws” refers to City ordinances adopted under State authority as well as to State statutes.⁸

JURISDICTION OF THREE-JUDGE DISTRICT COURT

A three judge district court is required for the granting of “an interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State”. (22 U. S. C. A. 2281.) According to the complaint and the answers, the separation of the races on the buses is required both by State statutes and by City ordinances. Admittedly, therefore, State statutes are involved. The defendants claim, however, that the statutes and ordinances are being enforced by municipal officers only, and not by “any officer of such State”. (28 U. S. C. A. 2281, *supra*.)

If the members of the Alabama Public Service Commission are proper parties defendant, a matter to be hereinafter discussed, then it must be conceded that the objection to the jurisdiction of the three judge district court fails. Irrespective of the answer to that question, however, we think that the three judge district court has jurisdiction.

The State statutes, footnote 1, *supra*, vest in the defendant bus drivers the authority to enforce, and, notwithstanding their insistence to the contrary, we think that when so engaged the bus drivers clearly are officers of the State.

⁷ Constitution of Alabama of 1901, § 89; Alabama Code of 1940, Title 37, § 455.

⁸ *Buchanan v. Warley*, 245 U. S. 60; *Cf.* 42 U. S. C. A. 1983; *Carlson v. People of California*, 310 U. S. 106; *Lovell v. City of Griffin*, 303 U. S. 444; *North American Cold Storage Co. v. Chicago*, 211 U. S. 306; *El Paso v. Texas Cities Gas Co.*, 5th Cir., 100 F. 2d 501.

The City Commissioners have important duties to perform in connection with the enforcement, operation, and execution of State statutes. Under Alabama law, a municipal corporation "is essentially a public agency, a local unit of government, invested with a portion of the sovereign power of the State, for the benefit of its inhabitants." *Cooper v. Town of Valley Head*, 212 Ala. 125; 101 So. 874, 875. The defendant Chief of Police has authority to make arrests for violation of State statutes, 1940 Code of Alabama, Title 15, § 152. The City Recorder in criminal cases has the power of an ex-officio justice of the peace. 1940 Code of Alabama, Title 37, § 585. All of the City officials admit in their answers that they are enforcing the State statutes. An official, though localized by his geographic activities and the mode of his selection, is performing a State function when he enforces a statute which "embodies a policy of statewide concern."⁹

Very clearly, the three judge district court has jurisdiction.¹⁰

COMITY

The defendants, relying on *Alabama Public Service Commission v. Southern Railway Co.*, 341 U. S. 341, insist that even if the Federal court has jurisdiction, it should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is that that doctrine has

⁹ *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89; *Rorick v. Commissioners*, 307 U. S. 208, 212; *Cleveland v. United States*, 323 U. S. 329, 332; *Watch Tower Bible & Tract Society v. Bristol*, D. Ct. Conn., 24 F. S. 57, affirmed 305 U. S. 572; *Suncrest Lumber Co. v. N. C. Park Commission*, 4th Cir., 29 F. 2d 823.

¹⁰ If, however, the proceedings were not such as to require the presence of three judges, the judgment would still be valid as the act of the court of one judge, since that judge concurs and joins in the rendition of the judgment. *Commission v. Brasher Lines*, 312 U. S. 621, 626; *O'Malley v. U. S.*, 8th Cir., 128 F. 2d 676, 687.

no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts.¹¹

PARTIES

Without repeating the averments of the complaint we hold that they are clearly sufficient to constitute this a class action on behalf of the four individual plaintiffs and of all other Negro citizens similarly situated. See Rule 23 (a), F. R. C. P.

It was probably not necessary for the plaintiffs to sue the members of the Board of Commissioners and the Chief of Police, not only as such but also individually, when no relief is sought against them by way of damages. If, however, the plaintiffs' contentions are sustained, these defendants are acting not only in their capacities as municipal officers, but also as officers of the State; and, further, are possibly transcending the scope of their office in any capacity when they compel obedience to statutes and ordinances attacked as unconstitutional. Moreover, in issuing and enforcing an injunction, a court of equity acts in personam. If, as we trust will be true, no relief becomes necessary against any of them in their individual capacities, their joinder as individuals will prove harmless. The motion to strike said parties in their individual capacities is therefore denied.

The members of the Alabama Public Service Commission object to their joinder as parties defendant and move to dismiss the action as against them because they say that neither they nor the Commission have any jurisdiction

¹¹ *Lane v. Wilson*, 307 U. S. 268, 274; *Mitchell v. Wright*, 5th Cir., 154 F. 2d 924, 926; *Romero v. Weakley*, 9th Cir., 226 F. 2d 399, 402; *Wilson v. Beebe*, Dis. Ct. Del., 99 F. S. 418, 420, *Cf. Doud v. Hodge*, 350 U. S. 485, 487.

over the buses which are being operated within the City of Montgomery and its police jurisdiction.¹²

In the Act approved July 6, 1945, General Acts of Alabama 1945, p. 731, now carried into the pocket supplement of the 1940 Code of Alabama as Title 48, § 31(a), see footnote 1, *supra*, appears the following significant paragraph: "The provisions of this section shall be administered and enforced by the Alabama Public Service Commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced."

Testifying as a witness, the President of the Alabama Public Service Commission admitted that on April 24, 1956, he sent a telegram to the National City Lines of Chicago, of which the Montgomery City Lines, Inc., is a subsidiary, reading as follows:

"As President of the Alabama Public Service Commission, elected by the people of Alabama, sworn to uphold the segregation laws of this state, which include all forms of public transportation, I hereby defy ruling handed down by the United States Supreme Court ordering desegregation on public carriers. Alabama state law requiring segregation of the races on buses still stands. All public carriers in Alabama are hereby directed to strictly adhere to all present existing segregation laws in our state or suffer the consequences.

/s/ C. C. (JACK) OWEN, *President,*
Alabama Public Service."

That telegram was sent without the knowledge or concurrence of the other two Commissioners.

Since the 1945 Act expressly imposes on the Alabama Public Service Commission the duty of administering and enforcing its requirements as to segregation of the races, and since the President of the Commission has acted so

¹² Compare Code of Alabama 1940, Title 48, § 239 with § 2 of the Alabama Motor Carrier Act of 1939 carried into the pocket supplement of the Alabama Code as Title 48, § 301(2).

positively and affirmatively to that end, the motion to dismiss the action as against the members of the Alabama Public Service Commission should be and the same is hereby denied.¹³

VALIDITY OF SEPARATE BUT EQUAL DOCTRINE AS APPLIED TO
INTRASTATE TRANSPORTATION

The ultimate question is whether the statutes and ordinances requiring the segregation of the white and colored races on the common carrier motor buses in the City of Montgomery and its police jurisdiction are unconstitutional and invalid. Unless prohibited by the Constitution of the United States, the power to require such segregation is reserved to the States or to the people. See Tenth Amendment.

In their private affairs, in the conduct of their private businesses, it is clear that the people themselves have the liberty to select their own associates and the persons with whom they will do business, unimpaired by the Fourteenth Amendment. The Civil Rights Cases, 109 U. S. 3. Indeed, we think that such liberty is guaranteed by the due process clause of that Amendment.

There is, however, a difference, a constitutional difference, between voluntary adherence to custom and the perpetuation and enforcement of that custom by law. *Shelley v. Kraemer*, 334 U. S. 1, 13. The Fourteenth Amendment provides that "No State shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Those provisions do not interfere with the police power of the States so long as the state laws operate alike upon

¹³ If, in law and fact, the Commission has no jurisdiction over the operation of the buses here involved, the retention of the members of the Commission as parties defendant will be harmless to them, even if erroneous.

all persons and property similarly situated. *Barbier v. Connolly*, 113 U. S. 27, 31, 32. That Amendment "merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Marchant v. Penn. Railroad*, 153 U. S. 380, 390. The equal protection clause requires equality of treatment before the law for all persons without regard to race or color. See e.g. *Strauder v. West Virginia*, 100 U. S. 303; *Buchanan v. Warley*, 245 U. S. 60; *Gong Lum v. Rice*, 275 U. S. 78; *Shelley v. Kraemer*, 334 U. S. 1.

In *Plessy v. Ferguson*, 163 U. S. 537, decided in 1896, the Supreme Court held as to intrastate commerce that a Louisiana statute requiring railway companies to provide equal but separate accommodations for the white and colored races was not in conflict with the provisions of the Fourteenth Amendment. That holding was repeatedly followed in later cases. *Chesapeake and Ohio Ry. Co. v. Kentucky*, 179 U. S. 388 (1900); *Chiles v. Chesapeake & Ohio Ry. Co.*, 218 U. S. 71 (1910); *McCabe v. A. T. & S. F. Ry. Co.*, 235 U. S. 151 (1914).

In *Morgan v. Virginia*, 328 U. S. 373 (1946), the Court held that a state statute requiring segregated seats for Negro passengers on interstate buses was an unconstitutional burden on interstate commerce. In *Henderson v. United States*, 339 U. S. 816 (1950) the Court held that interstate railroad regulations and practices assigning a separate table in a dining car to Negroes contravened the Interstate Commerce Act. The Court referred to the statutory right as "a fundamental right of equality of treatment", and cited cases construing the Fourteenth Amendment, see 339 U. S. 825, though the Court did not reach the constitutional question. The reasoning applied was similar to that employed in *Shelley v. Kraemer*, 334 U. S. 1, 22, where the Court recognized that the underlying philosophy of the Fourteenth Amendment is the equality before the law of each individual.

In the field of college education, beginning in 1938 and continuing to the present time, the Court has first weakened the vitality of, and has then destroyed, the separate but equal concept. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337 (1938); *Sipuel v. Board of Regents of Univ. of Oklahoma*, 338 U. S. 631 (1948); *Fisher v. Hurst*, 333 U. S. 147 (1948); *Sweatt v. Painter*, 339 U. S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U. S. 637 (1950); *Hawkins v. Board of Control of University of Florida*, 347 U. S. 971 (1954); *Tureaud v. Board of Supervisors of L. S. U.*, 347 U. S. 971 (1954); *Lucy v. Adams*, 350 U. S. 1 (1955); *Florida ex rel. Hawkins v. The Board of Control*, 350 U. S. 413; *Board of Trustees of the University of N. C. v. Frasier*, 350 U. S. 979 (1956).

The separate but equal concept had its birth prior to the adoption of the Fourteenth Amendment in the decision of a Massachusetts State court relating to public schools. *Roberts v. City of Boston*, 59 Mass. (5 Cush) 198 (1849). The doctrine of that case was followed in *Plessy v. Ferguson*, *supra*. In the School Segregation cases, *Brown v. Board of Education*, 347 U. S. 483 (1954) and *Rollins v. Sharpe*, 347 U. S. 497 (1954) the separate but equal doctrine was repudiated in the area where it first developed, *i.e.*, in the field of public education. On the same day the Supreme Court made clear that its ruling was not limited to that field when it remanded "for consideration in the light of the Segregation cases * * * and conditions that now prevail" a case involving the rights of Negroes to use the recreational facilities of city parks. *Muir v. Louisville Park Theatrical Association*, 347 U. S. 971 (1954).

Later the Fourth Circuit expressly repudiated the separate but equal doctrine as applied to recreational centers. *Dawson v. Mayor and City of Baltimore*, 4th Cir., 220 F. 2d 386, 387. Its judgment was affirmed by the Supreme Court, 350 U. S. 877. The doctrine has further been repudiated in holdings that the cities of Atlanta and of Miami

cannot meet the test by furnishing the facilities of their municipal golf courses to Negroes on a segregated basis. *Rice v. Arnold*, 340 U. S. 848; *Holmes v. City of Atlanta*, 350 U. S. 879.

Even a statute can be repealed by implication. *A fortiori*, a judicial decision, which is simply evidence of the law and not the law itself, may be so impaired by later decisions as no longer to furnish any reliable evidence.¹⁴

¹⁴ This principle is aptly illustrated by the difference with which the Fourth Circuit treated *Plessy v. Ferguson* as a binding precedent in 1950, *Boyer v. Garrett*, 183 F. 2d 582 and in 1955, *Flemming v. South Carolina Electric & Gas Co.*, 224 F. 2d 752. In their change of views that distinguished Court headed by Chief Judge Parker was governed by the rule best stated by Judge Parker himself, speaking for a three judge district court in *Barnette v. West Virginia State Board of Education*, 47 F. S. 251, 252-3:

“Ordinarily we would feel constrained to follow an unreversed decision of the Supreme Court of the United States, whether we agreed with it or not. It is true that decisions are but evidences of the law and not the law itself; but the decisions of the Supreme Court must be accepted by the lower courts as binding upon them if any orderly administration of justice is to be attained. The developments with respect to the *Gobitis* case, however, are such that we do not feel that it is incumbent upon us to accept it as binding authority. Of the seven justices now members of the Supreme Court who participated in that decision, four have given public expression to the view that it is unsound, the present Chief Justice in his dissenting opinion rendered therein and three other justices in a special dissenting opinion in *Jones v. City of Opelika*, 316 U. S. 584, 62 S. Ct. 1231, 1251, 86 L. Ed. 1691. The majority of the court in *Jones v. City of Opelika*, moreover, thought it worth while to distinguish the decision in the *Gobitis* case, instead of relying upon it as supporting authority. Under such circumstances and believing, as we do, that the *kag salute* here required is violative of religious liberty when required of persons holding the religious views of plaintiffs, we feel that we would be recreant to our duty as judges, if through a blind following of a decision which the Supreme Court itself has thus impaired as an authority, we should deny protection to rights which we regard as among the most sacred of these protected by constitutional guaranties.”

To like effect is the opinion of Judge Frank for the Second Circuit in *Perkins v. Endicott Johnson Corporation*, 128 F. 2d 208, 217-218:

“We would stultify ourselves and unnecessarily burden the Supreme Court if—adhering to the dogma, obviously fictional to any

We cannot in good conscience perform our duty as judges by blindly following the precedent of *Plessy v. Ferguson*, *supra*, when our study leaves us in complete agreement with the Fourth Circuit’s opinion¹⁵ in *Flemming v. South Carolina Electric and Gas Co.*, 224 F. 2d 752, appeal dismissed April 24, 1956, _____ U. S. _____, that the separate but equal doctrine can no longer be safely followed as a correct statement of the law. In fact, we think that *Plessy v. Ferguson* has been impliedly, though not explicitly, overruled, and that, under the later decisions, there is now no rational basis upon which the separate but equal doctrine can be validly applied to public carrier transportation within the City of Montgomery and its police jurisdiction. The application of that doctrine cannot be justified as a proper execution of the state police power.¹⁶

reader of its history, that alterations in that court’s principles of decision never occur unless recored in explicit statements that earlier decisions are overruled—we stubbornly and literally followed decisions which have been, but not too obstentatiously, modified. ‘The life of the law,’ as Mr. Justice Holmes said, ‘has been experience.’ Legal doctrines, as first enunciated, often prove to be inadequate under the impact of ensuing experience in their practical application. And when a lower court perceives a pronounced new doctrinal trend in Supreme Court decisions, it is its duty, cautiously to be sure, to follow not to resist it.” See, also *United States v. Girouard*, 1st Cir., 149 F. 2d 760, 765, dissenting opinion of Judge Woodbury, reversed 328 U. S. 6; *New Eng. Mutl. Life Ins. Co. v. Welch*, 1st Cir., 153 F. 2d 260, 262; *Picard v. United Aircraft Corp.*, 128 F. S. 632, 636; opinion by Judge *Learned Hand*; *Spector Motor Service v. Walsh*, 2nd Cir., 139 F. S. 809, 814, opinion by Circuit Judge Clark; *Gardella v. Chandler*, 2nd Cir., 172 F. 2d 402, 409; *United States v. Ullum*, 2d Cir., 221 F. 2d 760, 762; “The Attitude of Lower Courts to Changing Precedents”, 50 Yale L. J. 1448.

¹⁵ That opinion is entitled to great respect, especially in view of the distinction and learning of the judges who compose that Court, Circuit Judges Parger, Soper and Bobie.

¹⁶ *Shelley vs. Kraemer*, 334 U. S. 1, 21; *Morgan vs. Virginia*, 328 U. S. 373, 380; *Buchanan vs. Warley*, 245 U. S. 60, 74; *City of Birmingham vs. Monk*, 5th Cir., 185 F. 2d 859, 862.

We hold that the statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States. This holding does not, however, become effective until the entry of formal judgment. The parties are requested to submit to the Court in writing within two weeks from the date of this opinion their views as to the form of judgment to be entered, and as to whether such judgment should be stayed in the event of an appeal.

This the 5th day of June, 1956.

RICHARD T. RIVES,
United States Circuit Judge.

EDWARD JOHNSON, JR.,
United States District Judge.

LYNNE, *District Judge*, dissenting:

Only a profound, philosophical disagreement with the ultimate conclusion of the majority "that the separate but equal doctrine can no longer be safely followed as a correct statement of the law" would prompt this, my first dissent. But I should consider myself recreant both to conscience and duty in withholding my views because of the affection and esteem which I bear for my associates.

For many years as a trial judge in the state and federal systems I have endeavored faithfully to understand and apply precedents established by the opinions of appellate courts. This was not a blind obedience to a legalistic formula embodied in the rule of *stare decisis*. It was the result of a simple belief that the laws which regulate the conduct, the affairs, and sometimes the emotions of our people should evidence not only the appearance but also the spirit of stability.

Judges of trial courts frequently find themselves in disagreement with the rationale of an old, but clearly controlling precedent. That is so because their positions do not insulate them from those changing physical and metaphysical concepts which form a part of the life process. But they are neither designed nor equipped to perform the legislative function of putting off the old and putting on the new. To arrogate to themselves this prerogative, in my humble opinion, would be the first, fatal step in making hollow the proud boast that ours is a "government of laws and not of men."

Judges Rives, just the other day, delivering the opinion of the Court of Appeals for the Fifth Circuit, sitting *en banc*, in *Howard v. United States*, _____ F. 2d _____ (April 20, 1956), stated my position, clearly and concisely:

"In the face of such recognition by the Supreme Court of a test of criminal responsibility, we do not feel at liberty to consider and decide whether in our opinion the recent modification of such test in the District of Columbia is sound or unsound, nor whether some other test should be adopted. *This Circuit follows the law as stated by the Supreme Court and leaves any need for modification thereof to that court, . . .*" (Emphasis supplied.)

The majority recognize, it was conceded in oral arguments by counsel for plaintiffs, that *Plessy v. Ferguson*, 163 U. S. 537 (1896) is precisely in point, and that its holding has been repeatedly followed in later transportation cases.¹ Its authority obviously was unaffected by the action of the Supreme Court in dismissing the appeal in *South Carolina Electric & Gas Co. v. Flemming*, _____ U. S. _____, 24 L. W. 3280. The citation of *Slaker v. O'Connor*, 278 U. S. 188, is convincing that it did not place the stamp of its approval upon the decision of the Fourth Circuit in

¹ *Chesapeake & Ohio Ry. Co. v. Kentucky*, 179 U. S. 388 (1900); *Chiles v. Chesapeake & Ohio Ry. Co.*, 218 U. S. 71 (1910); *McCabe v. A. T. & S. F. Ry. Co.*, 235 U. S. 151 (1914).

Flemming v. South Carolina Electric & Gas Co., 224 F. 2d 752, but simply concluded that its judgment was not final and hence that the appeal did not lie. 28 U. S. C. A. 1254(2).

In complete agreement with the Fourth Circuit's opinion in *Fleming* that the separate but equal doctrine can no longer be safely followed as a correct statement of the law, the majority conclude that *Plessy v. Ferguson*, in which that doctrine made its first appearance sixty years ago, has been impliedly, though not explicitly overruled. While I share their great respect for Judges Parker, Soper and Dobie, I do not at all agree.

A comparatively new principle of pernicious implications has found its way into our jurisprudence.² Lower courts may feel free to disregard the precise precedent of a Supreme Court opinion if they perceive a "pronounced new doctrinal trend" in its later decisions which would influence a cautious judge to prophesy that in due time and in a proper case such established precedent will be overturned explicitly. Peculiarly appropriate in this context is the following language of Judge Woodbury, writing for the First Circuit in *New England Mutual Life Ins. Co. v. Welch*, 153 F. 2d 260, 262:

"Furthermore we find no indication from anything said therein of a purpose to depart from the rule of the earlier decisions cited above. Under these circumstances we see no occasion even to consider the basic question whether we would adopt the doctrine of *Barnette v. West Virginia State Board of Education*, D. C. 47 F. Supp. 251, 253, and *Spector Motor Service v. Walsh*, 2 Cir., 139 F. 2d 809, 817, 823, and in extraordinary situations disregard controlling decisions of the

² *Barnette v. West Virginia State Board of Education*, 47 F. Supp. 251 (1942); *Perkins v. Endicott Johnson Corporation*, 128 F. 2d 208 (1942); *Spector Motor Service v. Walsh*, 139 F. 2d 809 (1943); *Gardella v. Chandler*, 172 F. 2d 402, 409 (1949); *United States v. Ullmann*, 221 F. 2d 760 (1955); *United States v. Girouard*, 149 F. 2d 760 (1945); 50 Yale Law Journal 1448.

Supreme Court not yet explicitly overruled. It will suffice to say that we would feel disposed to consider taking such a course only when there are the clearest indications that the controlling decisions of the Supreme Court, though not formally overruled, would no longer be followed by that Court and we find no such indications here."

In 1950, the Fourth Circuit had before it the case of *Boyer, et al. v. Garrett, et al.*, 183 F. 2d 582, involving an officially adopted rule providing for the segregation of races in athletic activities in the public parks and playgrounds in the City of Baltimore. In affirming the judgment of the District Court, the same judges who decided *Flemming* held:

"The contention of plaintiffs is that, notwithstanding this equality of treatment, the rule providing for segregation is violative of the provisions of the federal Constitution. The District Court dismissed the complaint on the authority of *Plessy v. Ferguson*, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256; and the principal argument made on appeal is that the authority of *Plessy v. Ferguson* has been so weakened by subsequent decisions that we should no longer consider it as binding. We do not think, however, that we are at liberty thus to disregard a decision of the Supreme Court which that court has not seen fit to overrule and which it expressly refrained from reexamining, although urged to do so, in the very recent case of *Sweatt v. Painter*, 70 S. Ct. 848. It is for the Supreme Court, not us, to overrule its decisions or to hold them outmoded."

In 1955, in *Flemming*, an intrastate transportation case, reversing the district judge, the court wrote:

"We do not think that the separate but equal doctrine of *Plessy v. Ferguson*, supra, can any longer be regarded as a correct statement of the law. That case recognizes segregation of the races by common carriers as being governed by the same principles as segregation in the public schools; and the recent decisions in *Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct.

686, 98 L. Ed. 873 and *Bolling v. Sharpe*, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884, which relate to public schools, leave no doubt that the separate but equal doctrine approved in *Plessy v. Ferguson* has been repudiated. That the principle applied in the school cases should be applied in cases involving transportation, appears quite clearly from the recent case of *Henderson v. United States*, 339 U. S. 816, 70 S. Ct. 843, 94 L. Ed. 1302, where segregation in dining cars was held violative of a section of the Interstate commerce act providing against discrimination."

Within this five year interval the Supreme Court had spoken pertinently but once, in the case of *Brown v. Board of Education*, 347 U. S. 483, since *Bolling v. Sharpe*, 347 U. S. 497, did not discuss *Plessy v. Ferguson* and appears to have been decided on a parity of reasoning. My study of *Brown* has convinced me that it left unimpaired the "separate but equal" doctrine in a local transportation case and I perceive no pronounced new doctrinal trend therein.

Of course I appreciate the care with which the Supreme Court limits its pronouncements upon great constitutional questions to the narrow issues before it and the only issue in *Brown* involved a collision between the Fourteenth Amendment and state laws commanding segregation in the public schools. But in *Brown* the Court's opinion referred to *Plessy v. Ferguson* six times and to its "separate but equal" doctrine on four occasions. It epitomized its concept of that doctrine as follows: "Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate." Its ultimate conclusion was, and this I conceive to be the rationale of its decision, "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

It seems to me that the Supreme Court therein recognized that there still remains an area within our constitu-

tional scheme of state and federal governments wherein that doctrine may be applied even though its applications are always constitutionally suspect and for sixty years it may have been more honored in the breach than in the observance. Granted that the trend of its opinions is to the effect that segregation is not to be permitted in public facilities furnished by the state itself and the moneys of the state, as in the case of public schools, or public parks, *cf. Muir v. Louisville Park Theatrical Association*, 347 U. S. 971; *Dawson v. Mayor and City of Baltimore*, 220 F. 2d 386, affirmed 350 U. S. 877, or municipal golf courses, *cf. Rice v. Arnold*, 340 U. S. 848; *Holmes v. City of Atlanta*, 350 U. S. 879, on the plain theory that if the state is going to provide such facilities at all, it must provide them equally to the citizens, it does not follow that it may not be permitted in public utilities holding nonexclusive franchises.

If that doctrine has any vitality, this is such a case in which it has been applied fairly. According to its teaching not absolute, but substantial equality is required. Such equality is not a question of dogma, but one of fact. Under the undisputed evidence adduced upon the hearing before us practices under the laws here attacked have resulted in providing the races not only substantially equal but in truth identical facilities.

In my opinion the holding of the Court in *Morgan v. Virginia*, 328 U. S. 373, that the attempt of a state to require the segregation of passengers on interstate busses results in the imposition of an undue burden on interstate commerce is wholly irrelevant to the issue before us. And equally inapposite is reference to *Henderson v. United States*, 339 U. S. 816, which held that rules and practices of interstate railroad carriers requiring the segregation of passengers in dining cars were offensive to Section 3(1) of the Interstate Commerce Act making it unlawful for a railroad in interstate commerce "to subject any particular

person, . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: . . .”

The supremacy of the federal government in matters affecting interstate commerce is axiomatic. Cases involving the exercise of its power in that realm shed no light on Fourteenth Amendment problems. It does seem quite clear that by its terms the Congress is given the power and duty to enforce the Fourteenth Amendment by legislation. Thus the Congress would have the power, thus derived, to proscribe segregation in intrastate transportation. It is worthy of note that for sixty years it has not seen fit to do so.

While any student of history knows that under our system of government vindication of the constitutional rights of the individual is not, and ought not to be, entrusted to the Congress, its reticence to intrude upon the internal affairs of the several states should caution us against doing so where the path of duty is not plainly marked and when we must hold a clear precedent of the Supreme Court outmoded.

Because I would dismiss the action on the authority of *Plessy v. Ferguson*, I do not reach the procedural questions discussed in the majority opinion. I respectfully dissent.

SEYBOURN H. LYNNE,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

No. 1147

AURELIA S. BROWDER, and SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next friend, and MARY LOUISE
SMITH, by Frank Smith, next friend, and others simi-
larly situated,

Plaintiffs,

vs.

W. A. GAYLE, CLYDE SELLERS and FRANK PARKS, individ-
ually and as members of the Board of Commissioners
of the City of Montgomery, Alabama, and GOODWYN
J. RUPPENTHAL, individually and as Chief of Police of
the City of Montgomery, Alabama, and THE MONTGOM-
ERY CITY LINES, INC., a Corporation, and JAMES F.
BLAKE, and ROBERT CLEERE, and C. C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

Defendants.

(Filed, June 19, 1956, R. C. Dobson, Clerk)

JUDGMENT

This cause came on to be heard before a three-judge court duly convened pursuant to the provisions of Title 28, United States Code, Sections 2281 and 2284.

After trial on the merits and careful consideration of the evidence therein adduced and after oral arguments and submission of briefs by all parties, the Court, being fully advised in the premises, found in an opinion handed down on June 5, 1956, that the enforced segregation of Negro and white passengers on motor buses operating in the City of Montgomery as required by Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City

of Montgomery, 1952, violates the Constitution and laws of the United States.

Now, in accordance with that opinion, it is Ordered, Adjudged and Decreed that Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

It is further Ordered, Adjudged and Decreed that the defendants, their successors in office, assigns, agents, servants, employees, and persons acting on their behalf, be and they are hereby permanently enjoined and restrained from enforcing the aforesaid statutes and ordinances or any other statutes or ordinances which may require plaintiffs or any other Negroes similarly situated to submit to segregation in the use of the bus transportation facilities in the City of Montgomery, and from doing any acts or taking any action to require the Montgomery Bus Lines, Inc., or its drivers, or any other public bus transportation facility, or its drivers, to enforce such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

Costs are taxed against defendants.

The injunction granted by this judgment is suspended for a period of ten days from the date hereof, and in the event an appeal is taken from this judgment within such period, such injunction will be further suspended until an additional order can be entered suspending such injunction during the pendency of such appeal.

Judges Rives and Johnson concur in this judgment, Judge Lynne dissents therefrom except as to the order of suspension, in which he concurs.

This the 19th day of June, 1956.

RICHARD T. RIVES,
United States Circuit Judge.
SEYBOURN H. LYNNE,
United States District Judge.
FRANK M. JOHNSON, JR.,
United States District Judge.

APPENDIX B

Constitution of the United States, Fourteenth Amendment, Section 1:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

United States Code, Title 28, Section 2281:

“An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.”

United States Code, Title 28, Section 2284:

“In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

“(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

“(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

“If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days’ notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

“Such notice shall be given by registered mail by the clerk, and shall be complete on the mailing thereof.

“(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

“(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest

practicable day. Two judges must concur in granting the application.

“(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

“A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 968.”

United States Code, Title 28, Section 1253:

“Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926.”

United States Code, Title 28, Section 2101(b):

“Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.”

United States Code, Title 42, Section 1981:

“All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R. S. S. 1977.”

United States Code, Title 42, Section 1983:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. S. 1979.”

Title 37, Section 587, Code of Alabama, 1940, as amended:

“(1937) (1217) Appeal from recorder’s court.—In any case involving the validity of an ordinance of the city, tried before the recorder, the council may take an appeal, without bond, to the circuit court or court of like jurisdiction; and in any case the defendant may take an appeal to such court by giving bond with good and sufficient sureties, payable to the city, to be approved by the recorder or officer trying the case, or should such recorder or officer trying the case be prevented, by absence from the city, death or other disability, from approving such bond, such bond may be approved by the city clerk, conditioned to be void if the defendant appears before said court, until discharged by law to answer said charge, but unless such bond be given within five days from the date of the judgment, no appeal shall be allowed from such judgment. An appeal bond for more than three hundred dollars shall in no case be required, but when sitting as a committing magistrate, any reasonable bond may

be required. The case appealed shall be tried de novo in such court, and the judge or jury trying such cause is authorized to impose upon the person convicted such punishment by fine, or imprisonment in the city jail, or other place of confinement, or hard labor for the city, or by fine and imprisonment, as the court or jury may deem proper and is authorized by law or ordinance for such offenses. When an appeal is taken, as provided for herein, said appeal shall be filed by the city in the court to which said appeal is returnable within sixty days; and if the city shall fail to file said appeal within said time, the city shall be deemed to have abandoned the prosecution of said cause, and the defendant shall not be required to further answer or appear, and the bond shall thereafter be void. When the city is situated within two or more counties, the appeal shall lie to the circuit court of the county where the transaction involved in the case took place. (1923, p. 737; 1953, p. 1181, appvd. Sept. 19, 1953; 1955, No. 374, appvd. Sept. 8, 1955.)”

Title 37, Section 588, Code of Alabama, 1940:

“(1938) (1218) Judgments on appeals from recorder’s court; proceedings thereon.—If such defendant fails to appear in the court to which an appeal was taken, when the case is called for trial, unless good cause is shown to the court for his absence or default, the court shall enter up a judgment of forfeiture on said appeal bond against the defendant and his sureties as is authorized or provided by law in criminal cases, and a new warrant of arrest may issue from the court without any other authority therefor, and the court may also, on motion of the solicitor or his assistant where the prosecution is in the name of the state, or on motion of the attorney prosecuting for the city or town where the prosecution is in the name of the city or town, or in the absence of such motion ex mero motu, dismiss such appeal. Upon the dismissal of such appeal, and by the fact of such dismissal of such appeal, the judgment of the recorder’s court against the defendant shall be reinstated and become final and the clerk of such court to which such case was appealed, must, in writing, notify the mayor or other chief executive or the recorder of said city or town

of the judgment of the court dismissing such appeal; provided, however, that the court to which said appeal was taken may, on motion of the defendant made within thirty days from the date of the order of dismissal, set aside such dismissal and reinstate such appeal on such terms as the court may prescribe, for good cause shown by the defendant for his absence or default. When such appeal has been dismissed, the court may at any time issue a warrant, and alias and pluries warrants, against the defendant, and the defendant may also be arrested without a warrant as an escape, and when so arrested, the defendant shall be delivered to the chief of police or marshal or any policeman of said city or town and punished in accordance with the original judgment of the recorder's court, and in case the defendant appears on such appeal and judgment is rendered against him, unless the fine and costs are presently paid, or a judgment confessed therefor in favor of the city or town by the defendant, with sureties in the same manner as provided for in convictions for violating the state laws, the said court to which said appeal was taken must remand the defendant to the city or town authorities for punishment, and the clerk of such court must in writing notify the mayor or other chief executive or the chief of police of said city or town of the judgment of the court trying such case, and said notice shall accompany the defendant when he is delivered to the city or town authorities for punishment; but, if the judgment of such court is paid, the clerk of said court may receive such fine and costs and the defendant may be discharged, and such clerk must, under a penalty of five percent per month thereon for a failure to do so, pay said money to the treasurer of the city or town, or to the officer corresponding to the treasurer thereof within thirty days after he receives it. His bondsmen shall also be liable for said penalty, and the amount thereof with the money collected may be recovered on motion after three days' notice. (1935, p. 1107.)"

Title 37, Section 593, Code of Alabama, 1940:

"(1943) (1220) Appeal to supreme court.—From the judgment of said circuit court or other court of like jurisdiction, the city, in a case involving the validity

of an ordinance, or the defendant in any case, may appeal to the supreme court of the state; and if the appeal is taken by the town or city, it shall give security for the costs of appeal. When taken by a defendant, he may give bail with sufficient sureties, conditioned that he will appear and abide the judgment of the appellate court, and failing to give bail, he must be committed to the town or city jail; but may give such bail at any time pending the appeal. When the appeal is taken by the defendant and bail is given pending the appeal, and the judgment of conviction is affirmed or the appeal is dismissed, the defendant is bound by the undertaking of bail to surrender himself to the town marshal or chief of police of the city within fifteen days from the date of such affirmance or dismissal, and if he shall fail to do so, the clerk of the court from which the appeal is taken, upon motion of the city, must endorse the bail bond forfeited, and a writ of arrest must be issued by such clerk to the sheriff, and if not executed another must be issued, and so on until the defendant is arrested, and upon arrest he shall be delivered to the chief marshal or chief of police and the sentence must, without delay, be carried out as if no appeal had been taken; and whenever an undertaking of bail is forfeited as herein provided, a conditional judgment must be rendered by the court in favor of the city and the same proceedings had thereon for the city as is authorized by law to be had in the name of the state for the use of the county in state cases. (1935, p. 1101.)"

Title 48, Sections 301 (31a, 31b and 31c), Code of Alabama, 1940, as amended:

"301(31a). Separate accommodations for white and colored races.—All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each

vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and, if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and, for such refusal, neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

“The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

“301(31b). Operators of passenger stations and carriers authorized to segregate white and colored races.—All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or

agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, S. 1, appvd. July 18, 1947.)

“301(31c). Failure to comply with rules and regulations as to segregation of white and colored races.—It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulation, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company, or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles carrying passengers for hire, of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation, or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for each offense. (1947, p. 40, S. 2, appvd. July 18, 1947.)”

Code of the City of Montgomery, 1952, Chapter 6:

“Section 10.

“Every person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the negroes, where there are both white and negroes on the same car; provided, however, that negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people.

“Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit. (Code 1938, Ss. 603, 606.)

“Section 11.

“Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant. (Code 1938, S. 604.)”

Code of the City of Montgomery, 1952, Chapter 1, Section 6:

“Wherever in this Code, or in any ordinance, or rule or regulation promulgated by any officer or agency of the city under authority vested in him or it by law or ordinance, any act is prohibited or is declared to be unlawful, or the doing of any act is required, or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code, or any such ordinance, rule or regulation shall be punished by a fine of not less than one nor more than one hundred dollars, or by imprisonment in jail or at hard labor for a period of not exceeding six months, or by both such fine and imprisonment, at the discretion of the recorder. Each day any violation of this Code or any such ordinance, rule or regulation continues shall constitute a separate offense. (Code 1938, S. 590.)”

RETURN ON SERVICE OF WRIT

United States of America,

Middle DISTRICT OF Alabama

ss:

Aurelia S. Browder, et al

CA 1147

vs.

W. A. Gayle, et al

I hereby certify and return that I served the annexed Writ of Injunction

on the therein-named

Clyde Sellers

by handing to and leaving a true and correct copy thereof with him

personally

at 1453 South Perry St. in said District on the 21st day of

Montgomery, Alabama December, 1956, 7:55 am.

RETURNED AND FILED

Service \$2.00

CHARLES S. PRESCOTT

U.S. Marshal.

By

James W. ...

Deputy.

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America,
Middle DISTRICT OF Alabama

} ss: Aurelia S. Browder et al
vs. W. A. Gayle, et al Civ. Action No. 1147

I hereby certify and return that I served the annexed Writ of Injunction

on the therein-named

Frank Parks

by handing to and leaving a true and correct copy thereof with him

personally

at Montgomery, Alabama in said District on the 20th day of

December, 1956, at 11:25 a.m.

Service \$2.00

RETURNED AND FILED

CHARLES S. PRESCOTT

U.S. Marshal.

DEC 21 1956

By

James W. Burns

Deputy.

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America,
Middle DISTRICT OF Alabama

} ss: Aurelia S. Browder et al
vs W. A. Gayle, et al Civ.Action No. 1147

I hereby certify and return that I served the annexed Writ of Injunction

on the therein-named

Goodwyn J. Ruppenthal

by handing to and leaving a true and correct copy thereof with him

personally

at Montgomery, Alabama in said District on the 20th day of

December, 1956, at 11:10 a.m.

RETURNED AND FILED

Service \$2.00

CHARLES S. PRESCOTT

U.S. Marshal.

By

James W. Burns
Deputy.

DEC 21 1956

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America, }
 Middle DISTRICT OF Alabama } ss:

Aurelia S. Browder, et al
 vs.
 W. A. Gayle, et al

I hereby certify and return that I served the annexed Writ of Injunction
 on the therein-named Robert Cleere

by handing to and leaving a true and correct copy thereof with Robert Cleere at
537 Morningview Drive, personally
 at Montgomery, Alabama in said District on the 20th day of
December, 1956 at 11:58 AM

Marshal's Fees:
 Travel - - - - - \$.70
 Service - - - - - 2.00
 Total - - - - - \$2.70

U. S. GOVERNMENT PRINTING OFFICE 16-17777

RETURNED AND FILED CHARLES S. PRESCOTT
 U.S. Marshal.

By John B. Lassiter
 DEC 21 1956 Deputy.

R. C. DOBSON
 CLERK

RETURN ON SERVICE OF WRIT

United States of America, }
Middle DISTRICT OF Alabama } ss:

Aurelia S. Browder, et al
vs.
W. A. Gayle, et al

I hereby certify and return that I served the annexed Writ of Injunction
on the therein-named James F. Blake

by handing to and leaving a true and correct copy thereof with James F. Blake at
27 North Lewis St., personally
at Montgomery, Alabama in said District on the 20th day of
December, 1956, at 11:37 AM

Marshal's Fees:
Travel - - - - - \$
Service - - - - - 2.00
Total - - - - - \$ 2.00

RETURNED AND FILED

CHARLES S. PRESCOTT
U.S. Marshal.

By John B. Cassiter
Deputy.

DEC 21 1956

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America,
Middle DISTRICT OF Alabama

} ss: Aurelia S. Browder, et al
vs.
W. A. Gayle, et al

I hereby certify and return that I served the annexed Writ of Injunction
on the therein-named Montgomery City Lines, Inc.,

by handing to and leaving a true and correct copy thereof with James H. Bagley, Superintendent,
personally
Office, Montgomery City Lines,
at Montgomery, Alabama in said District on the 20th day of
December, 1956 at 11:16 AM

Marshal's Fees:
Travel ----- \$
Service ----- 2.00
Total ----- \$2.00

RETURNED AND FILED

CHARLES S. PRESCOTT
U.S. Marshal.

DEC 21 1956 By John B. Lassiter
Deputy.

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America,

Middle DISTRICT OF Alabama

} ss:

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

I hereby certify and return that I served the annexed Writ of Injunction

on the therein-named City of Montgomery

by handing to and leaving a true and correct copy thereof with Walter Kanabe, City Attorney,

personally

at 511 Hill Building
Montgomery, Alabama in said District on the 20th day of

December, 19 56 at 12:27 PM

Marshal's Fees:

Travel	-	-	-	\$	
Service	-	-	-	\$	<u>2.00</u>
Total	-	-	-	\$	<u>2.00</u>

RETURNED AND FILED

CHARLES S. RESCOTT

U.S. Marshal.

DEC 21 1956

By John B. Lassiter

Deputy.

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

United States of America,
Middle DISTRICT OF Alabama

ss: Aurelia S. Browder et al
vs.
W.A. Gayle et al Civ.No.1147

I hereby certify and return that I served the annexed Writ of Injunction
on the therein-named Sibyl Pool, as member of the
Alabama Public Service Commission

by handing to and leaving a true and correct copy thereof with her
personally
at State Office Building
Montgomery, Alabama in said District on the 20th
December, 1956 at 11:27AM.

RETURNED AND FILED CHARLES S. PRESCOTT
U.S. Marshal.

DEC 21 1956 By Jack E. Johnson
Deputy.

R. C. DOBSON
CLERK

U. S. GOVERNMENT PRINTING OFFICE 16-17777

Marshal's Fees:

Travel	-----	\$	-----
Service	-----		2.00
Total	-----	\$	2.00

RETURN ON SERVICE OF WRIT

Aurelia S. Browder et al

vs.

W.A. Gayle et al

Civ. No. 1147

United States of America,

Middle DISTRICT OF Alabama

ss:

I hereby certify and return that I served the annexed Writ of Injunction

on the therein-named Jimmy Hitchcock, as member of the
Alabama Public Service Commission

by handing to and leaving a true and correct copy thereof with him

personally

State Office Building
at Montgomery, Alabama in said District on the 20th day of

December, 1956 at 11:16AM.

RETURNED AND FILED

CHARLES S. PRESCOTT

U.S. Marshal.

DEC 21 1956

By

Jack S. Johnson

Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-17777

Marshal's Fees:

Travel	- - - - -	\$	200
Service	- - - - -		
Total	- - - - -	\$	200

R. C. DOBSON
CLERK

RETURN ON SERVICE OF WRIT

Civ.No. 1147

United States of America, }
Middle DISTRICT OF Alabama } ss:

Aurelia S. Browder et al
vs.

W. A. Gayle et al

I hereby certify and return that I served the annexed
Writ of Injunction on the therein-named C. C. (Jack) Owen, as member of
the Alabama Public Service Commission

by handing to and leaving a true and correct copy thereof with him
State Office Building personally
at Montgomery, Alabama in said District on the 20th day of
December, 1956 at 11:20AM.

RETURNED AND FILED CHARLES S. PRESCOTT
U.S. Marshal.

DEC 21 1956 By Jack S. Johnson
Deputy.

U. S. GOVERNMENT PRINTING OFFICE 16-17777

Marshal's Fees:

Travel - - - - - \$
Service - - - - - 2.00
Total - - - - - \$ 2.00

R. C. DOBSON
CLERK

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AURELIA S. BROWDER, and)
SUSIE McDONALD and CLAUDETTE)
COLVIN, by Q. P. Colvin, next)
friend, and MARY LOUISE SMITH,)
by Frank Smith, next friend,)
and others similarly situated,)

Plaintiffs,)

vs.)

NO. 1147)

W. A. GAYLE, CLYDE SELLERS and)
FRANK PARKS, individually and as)
members of the Board of Commissioners)
of the City of Montgomery, Alabama,)
and GOODWYN J. RUPPENTHAL, individually)
and as Chief of Police of the City of)
Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and C. C. (JACK))
OWEN, JIMMY HITCHCOCK, and SIBYL)
POOL, as members of the ALABAMA)
PUBLIC SERVICE COMMISSION,)

Defendants.)

ORDER

An appeal having been taken from the final judgment rendered in this case on the 19th day of June, 1956, it is ordered by the Court that the injunction therein granted be and the same hereby is suspended during the pendency of such appeal. This order is made by the assent of all the judges of this Court as evidenced by their signatures hereto.

This 28th day of June, 1956.


United States Circuit Judge


United States District Judge


United States District Judge

FILED

JUN 28 1956

R. C. DOBSON
Clerk

By  Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE

DISTRICT OF ALABAMA, NORTHERN DIVISION

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARY LOUISE SMITH,
by Frank Smith, next friend,
and others similarly situated,

Plaintiffs,

vs.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of
Commissioners of the City of
Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL, individu-
ally and as Chief of Police of
the City of Montgomery, Alabama,
and THE MONTGOMERY CITY LINES,
INC., a corporation, and JAMES F.
BLAKE, and ROBERT CLEERE, and
C. C. (JACK) OWEN, JIMMY HITCH-
COCK, and SIBYL POOL, as members
of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

CIVIL ACTION

NO. 1147

WRIT OF INJUNCTION

To the above-named defendants and each of them:

Take notice that you and each of you, your successors in office, assigns, agents, servants, employees, and persons acting on your behalf, be and you are hereby permanently enjoined and restrained from enforcing Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, or any other statutes or ordinances which may require plaintiffs or any other Negroes similarly situated to submit to segregation in the use of the bus transportational facilities in the City of Montgomery, and from doing any acts or taking any action to require the Montgomery Bus Lines, Inc., or its drivers, or any other public bus transportation facility, or its drivers, to enforce such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

This writ of injunction is issued pursuant to the order and judgment of this Honorable Court of date the 19th day of June, 1956, three Judges sitting

under the provision of Title 28, United States Code, Sections 2281 and 2284,
which judgment was affirmed by the Supreme Court of the United States on the
13th day of November, 1956, and pursuant also to the mandate of the Supreme
Court of the United States issued on the 18th day of December, 1956.

Done, this the 20th day of December, 1956.

R. C. Dobson

Clerk of the District Court of the
United States for the Middle District
of Alabama.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

AURELIA S. BROWDER, and)
SUSIE McDONALD and CLAUDETTE)
COLVIN, by Q. P. Colvin, next)
friend, and MARY LOUISE SMITH,)
by Frank Smith, next friend,)
and others similarly situated,)
Plaintiffs,)

vs.)

W. A. GAYLE, CLYDE SELLERS and)
FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and)
GOODWYN J. RUPPENTHAL, individu-)
ally and as Chief of Police of)
the City of Montgomery, Alabama,)
and THE MONTGOMERY CITY LINES,)
INC., a corporation, and JAMES F.)
BLAKE, and ROBERT CLEERE, and)
C. C. (JACK) OWEN, JIMMY HITCH-)
COCK, and SIBYL POOL, as members)
of the ALABAMA PUBLIC SERVICE)
COMMISSION,)
Defendants.)

CIVIL ACTION

NO. 1147

120
70

WRIT OF INJUNCTION

To the above-named defendants and each of them:

Take notice that you and each of you, your successors in office, assigns, agents, servants, employees, and persons acting on your behalf, be and you are hereby permanently enjoined and restrained from enforcing Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, or any other statutes or ordinances which may require plaintiffs or any other Negroes similarly situated to submit to segregation in the use of the bus transportational facilities in the City of Montgomery, and from doing any acts or taking any action to require the Montgomery Bus Lines, Inc., or its drivers, or any other public bus transportation facility, or its drivers, to enforce such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

This writ of injunction is issued pursuant to the order and judgment of this Honorable Court of date the 19th day of June, 1956, three Judges sitting under the provision of Title 28, United States Code, Sections 2281 and 2284,

which judgment was affirmed by the Supreme Court of the United States on the 13th day of November, 1956, and pursuant also to the mandate of the Supreme Court of the United States issued on the 18th day of December, 1956.

Done, this the 20th day of December, 1956.

R. C. Dobson

Clerk of the District Court of the
United States for the Middle District
of Alabama.

AFFIRMED: A True Copy.

Certified to Dec. 20, 19 56.

R. C. Dobson

R. C. Dobson,
Clerk, U. S. District Court,
Middle District of Alabama.

By _____
Deputy Clerk

JACK CRENSHAW
ATTORNEY AT LAW
702-706 FIRST NATIONAL BANK BLDG.
MONTGOMERY, ALA.

May 1, 1956

Hon. O. D. Street
Clerk, U. S. District Court
Federal Building
Montgomery, Alabama

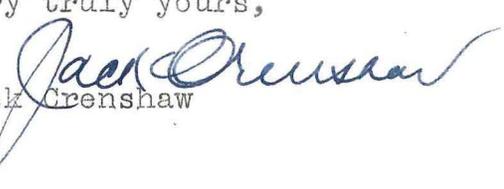
Dear Mr. Street:

Re: Browder, et al
Vs: W. A. Gayle, et al
Civil Action No. 1147-N

This will introduce Mr. Robert Thrun, a member of the Bar of the State of New York; a member of the firm of Hodges, Reavis, McGrath, Pantaleoni and Downey. I understand that Mr. Thrun is admitted to practice in the Federal Courts of New York.

Please enter his appearance as Attorney for Montgomery City Lines and James F. Blake & Robert Cleere and withdraw my appearance as such Attorney in the above case.

Very truly yours,


Jack Crenshaw

JC/hmb

CC: Hon. Walter J. Knabe, City Attorney
Hon. John Patterson, Attorney General
Attorney Fred D. Gray

FILED

MAY 2 1956

O. D. Street, Jr.
Clerk

By _____
Deputy Clerk

A copy of the foregoing Amendment to Motion to Strike was this day mailed, postage prepaid, to Attorneys Charles D. Langford and Fred D. Gray, Attorneys for Plaintiffs, 113 Monroe Street, Montgomery, Alabama.

This 4th day of May, 1956.

Herman H. Hamilton, Jr.
Herman H. Hamilton, Jr., Attorney
for Defendants, W. A. Gayle,
Clyde Sellers, Frank Parks and
Goodwyn J. Ruppenthal.

STATE OF ALABAMA
MONTGOMERY COUNTY

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA,
IN EQUITY.

I, Geo. H. Jones, Jr., as Register of said Court, do hereby certify that the foregoing is a full, true and correct copy of a decree _____ rendered by said Court on the 9th day of May, 19 56, in a certain cause pending in said Court wherein City of Montgomery, a Municipal Corporation, was complainant and Montgomery City Lines, Inc., a Corporation, was respondent, Docket No. 30358, as the same appears of record and on file in this office.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court, this the 10th day of May, 1956. ~~XXXXX~~, 1955.

Geo. H. Jones, Jr.
As Register of the Circuit Court of
Montgomery County, Alabama, In Equity.

2.

Recently because of publicity to the effect that the United States Supreme Court had declared certain statutes in South Carolina regarding segregation, unconstitutional, the Respondent issued a bulletin to all its employees as follows:

"BULLETIN #5-56

MONTGOMERY CITY LINES, INC.

April 23, 1956

TO: ALL EMPLOYEES
SUBJECT: SEATING ON BUSES

We have been advised that today Monday, April 23, 1956, the Supreme Court of the United States rendered a decision the effect of which is to hold unconstitutional segregation of races on buses. Under the circumstances the Company has no choice except to discontinue the practice of segregation of passengers on account of race and drivers will no longer assign seats to passengers by reason of their race.

/s/ J. H. BAGLEY
J. H. Bagley,
Transportation Superintendent

JMB:vkw

cc: Mr. K. E. Totten
Mr. B. W. Franklin
Chicago Office."

Subsequent to said time on request of the City of Montgomery to Respondent that it abide by the ordinances of the City and the Statutes of Alabama regarding segregation, the Respondent refused.

A situation of tension and unrest has been created in the City of Montgomery, which is likely to explode into violence at any time, if not restrained.

The legal questions in this case are three in number. The first of these arises out of an averment in the answer of the Respondent that there is presently pending in the United

States District Court for the Middle District of Alabama, Northern Division, at Montgomery, an action entitled "Browder et al. vs. Gayle et al., Civil Action No. 1147-N" and that the decision in that case will be determinative of the matters here involved. No evidence of any type is presented to this Court in reference to said civil action and no allegation is made except the general conclusion by the Respondent. The Attorney for the City of Montgomery contends that the issues are not the same; that the parties are not the same, and that for these and other reasons Comity does not require that this action be abated. However, the Court is of opinion that the facts before this Court in reference to said proceeding are insufficient to justify this Court's going into them at this time, and the consideration of arguments pro and con is unnecessary.

Another legal issue is the question of whether a court of equity will consider a case which involves a criminal matter. The Court is of opinion that this matter is disposed of by the case of Corte v. State, 259 Ala. 536, 67 So.2d 782. In that case the Supreme Court of the State of Alabama held that where public rights, property and welfare are jeopardized and an injunction is needed for their protection, the criminality of the acts complained of does not bar remedy by injunction. Said the Court in part:

"Where an injunction is necessary for the protection for public rights, property or welfare, the criminality of the acts complained of does not bar the remedy by injunction, and the court will consider the criminality of the act only to determine whether, under the particular circumstances, equitable intervention is necessary."

See also Bryan v. Mayor and Aldermen of City of Birmingham, 154 Ala. 447, 45 So. 922.

The Court is of opinion that under the facts of this case, the holding in the Corte case is applicable.

The only other legal phase is the question of whether the ordinances of the City of Montgomery and the statutes of the State of Alabama regarding segregation are constitutional.

This phase presents for determination by the Court two questions:

(1) Does the Alabama state law providing for the segregation of the races on common carriers in intra-state commerce, each race having equal accommodations (Code 1940, Title 48, section 301 (31a) 1951 Pocket Parts) offend any provision of the United States Constitution or of the Alabama Constitution; and

(2) Does the ordinance of the City of Montgomery (City Code Montgomery 1952, sections 10 and 11) requiring operators of bus lines within the city to assign seats in the buses so as to separate the white people from the Negroes riding in the same bus, violate the State Constitution or any provision of the Federal Constitution.

So far as the city ordinance attacked here, requiring the separation of the races on buses, is concerned we have the Alabama Supreme Court decision (1899) Bowie v. Birmingham Railway & Electric Company, 125 Ala. 397, 27 So. 1016, holding that a regulation of a street car company requiring white passengers to sit in one part of the car and Negro passengers to sit in another part of the car, is reasonable. The Court holds that the right of the company to adopt and enforce such a rule is founded on its right of private property in the means of conveyance and the public interest.

This opinion by Tyson, J., is one of the leading cases in the nation. The Court observed among other things:

"It is not an unreasonable regulation to seat passengers so as to preserve order and decorum, and to prevent contacts and collisions arising from natural or well known customary repugnances which are likely to breed disturbances by a promiscuous sitting. This is a proper use of the right of private property, because it tends to protect the interests of the carrier as well as the interest of those he carries. If the ground of regulation be reasonable, courts of justice can not interfere with his right of property."

Then the Court considers what the rights of a passenger are and answers the inquiry by stating:

"The right of the passenger is only that of being carried safely, and with a due regard to his personal comfort and convenience, which are promoted by a sound and well regulated separation of passengers."

The Alabama Supreme Court adopts, word for word, an opinion delivered by Mr. Justice Agnew of the Supreme Court of Pennsylvania in the case of West Chester & Philadelphia Railroad Co. v. Miles, 55 Pa. State 209, where the identical question then before our Supreme Court was before the Pennsylvania court. That court held that a regulation of a railroad company requiring the train conductor to seat white passengers in one part of the railroad coach and Negro passengers in another part, was a reasonable regulation.

The court also quotes a decision of the United States Supreme Court, Hall v. McCuir, 95 U S 485, sustaining a similar rule made by the owners of a steamboat. The United States Supreme Court then said:

"What the passenger has a right to require is such accommodation as he has contracted for, or, in the absence of any special contract, such suitable accommodations as the room and means at the disposal of the carrier enable him to supply; and in locating his passengers in apartments at their meals, it is not only the right of the master, but his duty, to exercise such reasonable discretion and control as will promote, as far as practicable, the comfort and convenience of his whole company."

So the Court concludes, from a study of these well-considered cases, and there are many, many other similar holdings by the courts of the land, that if our higher courts sustain the right of a carrier of passengers to make reasonable rules and regulations and for the separation of the races in its vehicles, then for a stronger and more compelling reason an ordinance of the city in which the buses operate entirely in intra-state commerce, must be sustained.

In the case now before the Court it is not contended that the Negro passengers have any special contract of carriage with the bus company. They know when they pay their fare and enter the bus that the ordinance of the City of Montgomery and the law of the State of Alabama write into the implied contract of the bus company to carry safely, the further condition that white and Negro passengers shall sit in separate parts of the bus. This city ordinance and the Alabama law are a part of the implied contract of carriage. Neither the passenger nor the bus company has authority to annul or reject these laws.

No section of the Alabama Constitution has been cited to the Court which prohibits reasonable regulations separating the races on buses. There is none. On the other hand we have the wise and sound decision of our highest State court sustaining rules and regulations prescribed by the carrier for the transportation in intra-state commerce of white and Negro passengers. This decision has never been overruled. It is the law of this case today and must be followed by the Court. We have also the Alabama law requiring common carriers to provide separate but equal accommodations for the "white and colored races."

It results that the Montgomery city ordinance does not offend the Alabama Constitution.

It is next insisted that the city ordinances and the provisions of the Alabama Code, hereinbefore referred to, offend the Constitution and laws of the United States. There is no straight out decision of the Supreme Court of the United States holding that a State or city may not require the separation of the races on buses where carriage of passengers is solely intra-state.

There is a decision of the Fourth Federal Circuit Court of Appeals, the Flemming Case, 224 F 2d 752 (July 14, 1955) drawing the conclusion that some decisions of the Federal Supreme Court, particularly the School Segregation cases, Brown v. Board of Education of Topeka, 347 U S 483, 98 L. ed 873, indicate that the highest federal court will declare invalid, if and when the question is presented, bus segregation ordinances, even where all the passengers are purely intra-state passengers and are only carried from one point in a city to another part of the same town.

This decision of the Fourth Circuit Court of Appeals in the Flemming Case is not well reasoned, is not sound law and certainly a State court in Alabama is not bound by the unsound reasoning, or rather lack of reasoning, of this court's opinion. Were the opinion sound and well reasoned, it might be of the class called 'persuasive' authority but for the reasons pointed out it is not even persuasive on the Court in the instant case and is, of course, without any binding authority whatever. At best it is simply the guess of the Fourth Circuit Court of what the United States Supreme Court will hold.

This Court, in deciding the case now before it, does not sit as a legislative body to make law. That is not the function of the courts. Their function is to declare and construe

the law as it is made and written by the law-making departments of our governments. Courts cannot, under the guise of construction make a law. The making of laws is exclusively the function of the legislative department of the government.

The question now before this Alabama court, a court of one of the sovereign States of the Union, can be answered by a reference to the Federal Constitution, to a part of the Bill of Rights in the United States Constitution, one neglected of recent years and practically forgotten by the federal courts. Yet it is a part of the United States Constitution which, if it had not been put in the federal Bill of Rights would have prevented the adoption of the Federal Constitution. It is a part of the Constitution which was regarded as absolutely essential in the formative days of our country. The Founding Fathers were agreed that there should be an amendment to the Constitution making plain and clear that unless the States delegated to the federal government a power or prohibited to themselves the exercise of a power, then the States reserved that power to themselves in their people.

The section of the Bill of Rights which the judge of this court has taken an oath to support and maintain, is Amendment X to the Constitution which declares:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This states a great principle of American constitutional law, and states it in such simple words that the meaning can be understood by all. There is neither ambiguity nor doubt in the language of the Tenth Amendment. If the power claimed by the

United States, or by its law-making Supreme Court, is not a power delegated to the United States, nor a power the sovereign States of the Union have denied themselves, then that power is expressly reserved to the States or to the people of the States.

Where in the United States Constitution (may we ask) is there any delegation of power to the United States Government to say that a State cannot make reasonable regulations for the carriage of passengers on public conveyances wholly within the State? Where in the Federal Constitution is there one word, one sentence, or one paragraph, saying that the sovereign States of this Union, the states which created the federal government, and many of whose constitutions antedate the Federal Constitution, are prohibited from making, in the exercise of the police power of the State, reasonable rules for the separation of the races in buses carrying passengers in a city or between two points wholly within the State?

The Federal Constitution neither delegates the power claimed to the United States, nor does it prohibit the power to the States of the Union.

We must always remember that the government of the United States is one of limited powers. It cannot exercise any power of government not granted to it by the States. The federal government gets whatever powers it has, and only such, as are ceded to it by the States of the Union. All other rights and powers, necessary to maintain our dual system of government, remain in the States. And in the States these powers rightfully remain. They have never been ceded or given to the national government at Washington.

The Court can nowhere find in the Federal Constitution any grant of the power to say to the sovereign States of the Union: "You cannot regulate within the borders of your own cities and States the carriage of passengers by bus. You cannot require

white passengers to occupy seats in one part of the bus and Negro passengers seats in another section of the bus."

The Constitution, torture its wording as you may, nowhere gives the federal government at Washington, nor the Congress of the United States, nor the United States Supreme Court, the power to forbid a State, in the exercise of its police power, to separate passengers using buses from one point to another point wholly within a given State. The power claimed for the federal government by the Fourth Circuit Court of Appeals does not exist and never has existed. It is a power reserved to the States and their people. The courts are without power to enlarge the sphere of federal control and operations, and they have no power to legislate.

The Circuit Court of Montgomery County, Alabama, mindful of its obligation to support and maintain the United States Constitution, must declare that under the Tenth Amendment to the United States Constitution the power to regulate the intra-state carriage of passengers on buses in Alabama is a power reserved to the State of Alabama. It has never surrendered this power to the United States Government nor given it to the Supreme Court at Washington, and this Court will not be a party to filching the power from the State.

DECREE

The Register will enroll the following decree:

This cause now coming on to be heard before the Court is submitted by the parties for decision upon the verified bill, the demurrer and answer of the Respondent, and

Upon consideration of the same the Court is of the opinion that the demurrer to the bill should be overruled. It

is, therefore,

ORDERED, ADJUDGED AND DECREED BY THE COURT

that the demurrer of the Respondent to the bill be, and the same is, hereby overruled.

And the Court now considering the matter upon the bill, the answer of the Respondent and the testimony taken orally before the Court, is of opinion and so finds, that the allegations of the bill are sustained, and that the law of the State of Alabama and the ordinances of the City of Montgomery, requiring the employees of bus companies to assign passengers seats so as to separate white people from the Negroes, is a valid exercise of the police power of the State and City, and is not subject to any of the objections urged against them. It is, therefore,

ORDERED, ADJUDGED AND DECREED BY THE COURT

that the Respondent company do withdraw the order it has issued to its employees, same being contained in Bulletin #5-56 dated April 23, 1956, with reference to seating of passengers on buses, and the said Respondent, its agents, servants and employees, be, and each is hereby required to comply with and abide by all the provisions of the ordinances of the City of Montgomery and the Statutes of Alabama relating to the seating of white and Negro passengers in separate portions of the conveyances of the Respondent operated within the City of Montgomery and its police jurisdiction.

Let the costs in this cause, to be taxed by the Register, be paid by Respondent, for which, if not presently paid, let execution issue.

Done this May 9, 1956.

Walter B. Jones

AURELIA S. BROWDER, and
SUSIE McDONALD, and CLAUDETTE
COLVIN, by Q. P. COLVIN, next
friend, and MARY LOUISE SMITH,
by FRANK SMITH, next friend and
others similarly situated,

Plaintiffs

vs.

W. A. GAYLE, CLYDE SELLERS, and
FRANK PARKS, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the City of
Montgomery, Alabama, and, THE
MONTGOMERY CITY LINES, INC., a
corporation, and JAMES F. BLAKE and
ROBERT CLEERE, and
C. C. (Jack) OWENS, JIMMIE HITCHCOCK
and SYBIL POOL as members of the
ALABAMA PUBLIC SERVICE COMMISSION.

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION NO. 1147-N

AMENDED ANSWER

For further answer to the complaint and the complaint as amended
the defendant pleads and says (supplementing and amending its answer
heretofore filed) unto the Court as follows:

1. On the 24th day of April, 1956, the defendant Montgomery City
Lines, Inc., uttered an instruction to its drivers that "the Company
(Montgomery City Lines, Inc.) has no choice except to discontinue the practice
of segregation of passengers on account of race, and drivers will no longer
assign seats to passengers by reason of their race."

2. Subsequently, the City of Montgomery, Alabama, petitioned for an
injunction in a suit filed in the Circuit Court of Montgomery County, in Equity,
and said suit being styled, City of Montgomery, Alabama, a municipal
corporation, complainant, vs. Montgomery City Lines, Inc., a corporation,
respondent, No. 30358.

3. On the 9th day of May, 1956, the Circuit Court of Montgomery County, Alabama, in the above entitled action issued its injunction in response to the prayer in the bill of complaint filed by the City of Montgomery expressly holding that the ordinances of the City of Montgomery and the statutes of the State of Alabama, which are the same ordinances and statutes challenged herein by the plaintiff, are valid ordinances and statutes and are a valid exercise of the police power of the State of Alabama and City of Montgomery. By that decree the defendant Montgomery City Lines, Inc., as the defendant in said action in the Circuit Court of Montgomery County and its agents, servants, and employees were ordered to comply with and abide by all the provisions of the ordinances of the City of Montgomery and the statutes of the State of Alabama relating to the seating of white and Negro passengers in separate portions of the conveyances of the said defendant Montgomery City Lines, Inc., while operating in Montgomery and its police jurisdiction. A duly certified copy of the opinion and decree of the Circuit Court of Montgomery County is attached hereto and made a part hereof.

4. By amendment made on May 10, 1956, the aforesaid decree was denominated a temporary restraining order to remain in effect until further order of the Circuit Court and provision was made for final hearing on the merits upon five days' notice by either party.

5. The defendant Montgomery City Lines, Inc., pursuant to said decree of the Circuit Court of Montgomery County has withdrawn the instructions uttered by it on April 24, 1956, and has instructed its drivers to comply with the decree of the Circuit Court of Montgomery County, Alabama.

WHEREFORE the defendant Montgomery City Lines, Inc., requests instructions of this Court as to the course of conduct to be pursued by Montgomery City Lines, Inc., in view of the position in which Montgomery City Lines, Inc., is placed as a result of the decree of the Circuit Court of Montgomery County and its position as defendant in this action.



Attorney for Defendant

CERTIFICATE

I hereby certify that I have delivered a copy of this answer to Fred Gray, Esquire, attorney of record for the plaintiffs and to Walter Knabe, Esquire, attorney of record for the defendants, W. A. Gayle, Clyde Sellers,

AURELIA S. BROWDER, and
SUSIE McDONALD, and CLAUDETTE
COLVIN, by Q. P. COLVIN, next
friend, and MARY LOUISE SMITH,
by FRANK SMITH, next friend, and
others similarly situated,

Plaintiffs

vs.

W. A. GAYLE, CLYDE SELLERS, and
FRANK PARKS, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, indivi-
dually and as Chief of Policy of the City
of Montgomery, Alabama, and THE
MONTGOMERY CITY LINES, INC., a
corporation, and JAMES F. BLAKE and
ROBERT CLEERE, and
C. C. (Jack) OWENS, JIMMIE HITCHCOCK,
and SYBIL POOL as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

Defendants

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION NO. 1147-N

*Filed
May 11, 1956
C. D. Strutz Jr. Clerk
By Charles K. Hughes
Deputy*

MOTION FOR LEAVE TO FILE AMENDED ANSWER

The defendant, The Montgomery City Lines, Inc., a corporation, moves the Court for leave to file an amended answer, a copy of which is attached hereto as Exhibit A, on the ground that since the filing of the answer of said defendant, certain significant and relevant events have occurred, which events are set out in detail in Exhibit A, and the said defendant further states that as a further ground for allowing the amended answer that justice so requires in order that all issues between the parties may be fully litigated in this action.

Robert 7A

Attorney for Defendant

CERTIFICATE

I hereby certify that I have delivered a copy of this motion to Fred Gray, Esquire, attorney of record for the plaintiffs and to Walter Knabe, Esquire, attorney of record for the defendants, W. A. Gayle, Clyde Sellers, and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, and John Patterson,

Esquire, the attorney of record for C. C. (Jack) Owens, Jimmie Hitchcock,
and Sybil Pool as members of the Alabama Public Service Commission, at
their offices in Montgomery, Alabama, on the 11 day of May, 1956.

Robert T. ...

AURELIA S. BROWDER, and
SUSIE McDONALD, and CLAUDETTE
COLVIN, by Q. P. COLVIN, next
friend, and MARY LOUISE SMITH,
by FRANK SMITH, next friend, and
others similarly situated,

PLAINTIFFS

vs.

W. A. GAYLE, CLYDE SELLERS, and
FRANK PARKS, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPENTHAL, individually
and as Chief of Police of the City
of Montgomery, Alabama, and THE
MONTGOMERY CITY LINES, INC., a
corporation, and JAMES F. BLAKE and
ROBERT CLEERE, and
C. C. (Jack) OWENS, JIMMIE HITCHCOCK,
and SYBIL POOL as members of the
ALABAMA PUBLIC SERVICE COMMISSION,

DEFENDANTS

IN THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF ALABAMA
NORTHERN DIVISION
CIVIL ACTION NO. 1147-N

FILED
MAY 23 1956
O. D. Street, Jr.
Clerk
By _____
Deputy Clerk

AMENDMENT TO AMENDED COMPLAINT

Comes the Plaintiffs and, with leave of the Court first obtained, amend
their amended complaint heretofore filed in this cause as follows:

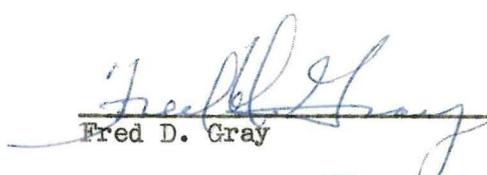
1. So that section (a) of paragraph two will read as follows:

(a) Whether the enforcement, execution or operation of
Title 48, Section 301 (31a, 31b, 31c), Code of Alabama,
1940, as amended, which requires the segregation of Plain-
tiffs and other Negro citizens, solely because of race and
color on motor vehicle carriers for hire operating within
the City of Montgomery and the State of Alabama, deny to
them their rights, privileges and immunities as citizens
of the United States, the due process of law and the equal
protection of the laws as secured by the Fourteenth Amend-
ment to the Constitution of the United States, and rights
and privileges secured to them by Title 42, United States
Code, Section 1981 and 1983, and whether said enforcement,
execution and operation of said statutes are for the afore-
said reasons unconstitutional and void.

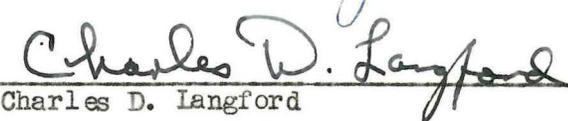
2. So that section (b) of paragraph two will read as follows:

(b) Whether the enforcement, execution or operation of Sections
10 and 11 of Chapter 6, Code of the City of Montgomery, Alabama,
1952, pertinent provisions of said ordinance are attached hereto,
marked Exhibit "B" and made a part of this complaint, which re-
quires the segregation of Plaintiffs, and other Negro citizens,
solely because of their race and color on motor vehicle carriers
for hire operating within the City of Montgomery and the State of
Alabama deny to them their rights, privileges and immunities as
citizens of the United States, the due process of law and the
equal protection of the laws as secured by the Fourteenth Amend-
ment to the Constitution of the United States, and rights and
privileges secured to them by Title 42, United States Code,
Sections 1981 and 1983, and whether said enforcement, execution
and operation of said ordinances are for the aforesaid reasons
unconstitutional and void.

113 Monroe Street
Montgomery, Alabama


Fred D. Gray

131 $\frac{1}{2}$ Monroe Street
Montgomery, Alabama


Charles D. Langford

107 West 43rd Street
New York, New York

Robert L. Carter

Attorneys for Plaintiffs

CERTIFICATE

I hereby certify that I have mailed postage prepaid a copy of this Amendment to Walter Knabe, Esq., Hill Building, Montgomery, Alabama, Attorney of Record for the Defendants, W. A. Gayle, Clyde Sellers and Frank Parks, individually, and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama; and Truman Hobbs, Esq., Professional Center Building, Montgomery, Alabama, Attorney for the Montgomery City Lines, a corporation, and James F. Blake and Robert Cleere; and John Patterson, Esq., State Judicial Building, Montgomery, Alabama, the Attorney of Record for C. C. (Jack) Owens, Jimmie Hitchcock and Sybil Pool as members of the Alabama Public Service Commission on the _____ day of May, 1956.


Fred D. Gray

IN THE

UNITED STATES DISTRICT

COURT FOR THE MIDDLE

DISTRICT OF ALABAMA

NORTHERN DIVISION

CIVIL ACTION NO. 1147-N

AURELIA S. BROWDER, et al

vs.

W. A. GAYLE, et al

AMENDMENT TO AMENDED COMPLAINT

LAW OFFICES
FRED D. GRAY
113 MONROE STREET
MONTGOMERY, ALABAMA

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

FILED

JUN 19 1956

R. C. DOBSON
Clerk

By..... Deputy Clerk

AURELIA S. BROWDER, and)
SUSIE McDONALD and CLAUDETTE)
COLVIN, by Q. P. Colvin, next)
friend, and MARY LOUISE SMITH,)
by Frank Smith, next friend,)
and others similarly situated,)

Plaintiffs,)

vs.)

NO. 1147

W. A. GAYLE, CLYDE SELLERS and)
FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and)
GOODWYN J. RUPPENTHAL, individually)
and as Chief of Police of the City)
of Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and C. C. (JACK))
OWEN, JIMMY HITCHCOCK, and SIBYL)
POOL, as members of the ALABAMA)
PUBLIC SERVICE COMMISSION,)

Defendants.)

JUDGMENT

This cause came on to be heard before a three-judge court duly convened pursuant to the provisions of Title 28, United States Code, Sections 2281 and 2284.

After trial on the merits and careful consideration of the evidence therein adduced and after oral arguments and submission of briefs by all parties, the Court, being fully advised in the premises, found in an opinion handed down on June 5, 1956, that the enforced segregation of Negro and white passengers on motor buses operating in the City of Montgomery as required by Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, violates the Constitution and laws of the United States.

Now, in accordance with that opinion, it is Ordered, Adjudged and Decreed that Section 301 (31a, 31b and 31c) of Title 48, Code of Alabama, 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, 1952, are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

It is further Ordered, Adjudged and Decreed that the defendants, their successors in office, assigns, agents, servants, employees, and persons acting on their behalf, be and they are hereby permanently enjoined and restrained from enforcing the aforesaid statutes and ordinances or any other statutes or ordinances which may require plaintiffs or any other Negroes similarly situated to submit to segregation in the use of the bus transportational facilities in the City of Montgomery, and from doing any acts or taking any action to require the Montgomery Bus Lines, Inc., or its drivers, or any other public bus transportation facility, or its drivers, to enforce such statutes or ordinances requiring the segregation of white and Negro passengers in the operation of public motor bus transportation facilities in the City of Montgomery.

Costs are taxed against defendants.

The injunction granted by this judgment is suspended for a period of ten days from the date hereof, and in the event an appeal is taken from this judgment within such period, such injunction will be further suspended until an additional order can be entered suspending such injunction during the pendency of such appeal.

Judges Rives and Johnson concur in this judgment, Judge Lynne dissents therefrom except as to the order of

suspension, in which he concurs.

This the 17th day of June, 1956.


United States Circuit Judge


United States District Judge


United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and
CLAUDETTE COLVIN, by
Q. P. COLVIN, next friend,
and MARY LOUISE SMITH, by
FRANK SMITH, next friend,
and others similarly situated,

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually
and as members of the Board
of Commissioners of the City
of Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL,
individually and as Chief of Police
of the City of Montgomery,
Alabama, and THE MONTGOMERY
CITY LINES, INC., a corporation,
and JAMES F. BLAKE, and ROBERT
CLEERE, and C. C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL
POOL, as members of the
ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

PETITION FOR INSTRUCTIONS

Your petitioners, individually, and as members of
the Board of Commissioners of the City of Montgomery, Alabama,
pursuant to the order of this Court dated December 20, 1956,
have been enjoined from taking certain actions specified in
said order with regard to the operation of bus transportation
systems in the City of Montgomery, Alabama.

Petitioners in their official capacities have had
presented to them for their approval pursuant to the provisions
of Section 220 of the Constitution of Alabama of 1901, an
application by The Rebel Club for the operation of a transportation

FILED

JAN 25 1957

R. C. DOBSON
Clerk

By *S.*
Deputy Clerk

system over the streets of the City of Montgomery in accordance with the plans set forth in said application. The said application is attached hereto as Exhibit A. The charter of The Rebel Club is attached hereto as Exhibit B.

Except for the acceptance of the foregoing documents, your petitioners have taken no action with regard to the above described application. Your petitioners, motivated by a desire to comply in all respects with the order of this Honorable Court dated December 20, 1956, ask for the following instructions relating to official action which they may take with regard to the above described application for franchise to operate a transportation system in the City of Montgomery:

1. May petitioners entertain a hearing on said application, and thereupon decide whether or not the franchise sought in said application should be granted?
2. If the petitioners, upon hearing, find that a need for a franchise to operate such a transportation system exists in the City of Montgomery and that such franchise will be consonant with the public interest of the City of Montgomery and all of the citizens thereof, may petitioners grant such a franchise?
3. If such a franchise is granted, is it incumbent upon your Petitioners to see to it that in the course of the operation of this private enterprise the holder of such franchise does not discriminate between white and colored passengers?

Petitioners ask for such other instructions as this Court may think appropriate in order to guide petitioners in their desire to comply with this Court's order of December 20, 1956.

Respectfully submitted,

Walter J. Knabe
Walter J. Knabe
511 Hill Building
Montgomery, Alabama

D. N. Hamilton
D. N. Hamilton
26 So. Perry St.
Montgomery, Ala.

W. A. Gayle
W. A. Gayle

Clyde C. Sellers
Clyde C. Sellers

Frank W. Parks
Frank W. Parks

PETITIONERS

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

AURELIA S. BROWDER and)
SUSIE McDONALD and CLAUDETTE)
COLVIN, by Q. P. COLVIN, next)
friend, and MARY LOUISE SMITH,)
by FRANK SMITH, next friend, and)
others similarly situated,)
Plaintiffs,)

vs.)

CIVIL ACTION)

NO. 1147-N)

W. A. GAYLE, CLYDE SELLERS, and)
FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and GOODWYN)
J. RUPPENTHAL, individually and as)
Chief of Police of the City of)
Montgomery, Alabama, and THE)
MONTGOMERY CITY LINES, INC., a)
Corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and C. C. (JACK))
OWEN, JIMMY HITCHCOCK, and SIBYL)
POOL, as members of the ALABAMA PUBLIC)
SERVICE COMMISSION,)
Defendants.)

ORDER DISMISSING PETITION FOR INSTRUCTIONS

The petition for instructions presented by the Board of Commissioners of the City of Montgomery, Alabama, on the 25th day of January, 1957, is dismissed for the reason that under the Constitution of the United States, Article III, § 2, this Court's jurisdiction is confined to actual cases or controversies, and it has no power to give advisory opinions, nor to decide abstract, hypothetical, or contingent questions. Federation of Labor v. McAdory, 325 U.S. 450, 461.

The Court being without jurisdiction, Judge Lynne feels that he should express no individual opinion. Judges Rives and Johnson feel that it will be of some public service if they express their opinions as individuals, of which they presently entertain no doubt, namely, that the word "private" as used in the third question is inappropriate, and that each of the three questions propounded should be answered "yes".

This the 27th day of February, 1957.

/s/ Richard T. Rives
UNITED STATES CIRCUIT JUDGE
/s/ Seybourn H. Lynne
UNITED STATES DISTRICT JUDGE
/s/ Frank M. Johnson, Jr.
UNITED STATES DISTRICT JUDGE

FILED

FEB 27 1957

R. C. DOBSON
Clerk

By.....
Deputy Clerk

BEST: A True Copy.
Certified to Feb. 27, 1957

R. C. Dobson,
Clerk, U. S. District Court,
Middle District of Alabama.

By Annice Schooler
Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE COLVIN,
by Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly situated,

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C.C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

FILED

JAN 26 1957

R. C. DOBSON
Clerk

By.....
Deputy Clerk

ORDER

A "Petition for Instructions" having been presented to the Court by the Board of Commissioners of the City of Montgomery, Alabama, and the individual members thereof, it is now ordered by the Court that the Clerk furnish to each of the counsel of record for the plaintiffs and for the defendants in this cause a copy of such petition, together with the exhibits thereto. The Clerk may carry out this order by mailing such copy by registered mail to each of said attorneys. The Court will withhold action upon such petition for a period of at least three weeks from this date, during which said three weeks any of such counsel may, if they see fit, submit briefs to the Court on the propriety and authority of the Court to respond to said petition for instructions, together with briefs on the

ATTEST: A True Copy.
Certified to Jan. 26, 1957 merits of such inquiry.

Done this the 26th day of January, 1957.

R. C. Dobson,
Clerk, U. S. District Court,
Middle District of Alabama.

By Annie Schooler
Deputy Clerk

Richard T. Rives
United States Circuit Judge

Frank M. Johnson, Jr.

UNITED States District Judge

John R. Council

the sum of \$200.00, as follows:

To R. C. Dobson, Clerk, the remaining one third of the costs	\$81.39
To the State of Alabama, refund of the balance of the cash appeal bond	\$118.61

This the 16th day of May, 1957.

FRANK M. JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

ATTEST: A True Copy.
Certified to May 16, 1957.

R. C. Dobson,
Clerk, U. S. District Court,
Middle District of Alabama.

By Annice Scholar
Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DIVISION OF THE MIDDLE DISTRICT OF ALABAMA

Aurelia S. Browder, and
Susie McDonald and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated,

Plaintiffs

vs.

W. A. Gayle, Clyde Sellers,
and Frank Parks, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a corporation, and James F. Blake,
and Robert Cleere, and G. C. (Jack) Owen,
Jimmy Hitchcock, and Sibyl Pool, as
members of the Alabama Public Service
Commission,

Defendants

Civil Action

No. 1147-N

It appearing to the Court that on August 17, 1956,
the State of Alabama deposited in the Registry Fund of this
Court the sum of \$200.00, as a cash appeal bond for the
defendant-Appellants, the Alabama Public Service Commission
and the City of Montgomery.

It further appearing to the Court that on
December 20, 1956, an Order Affirming the Judgment of this
Court was filed in said cause by the Supreme Court of the
United States, and that the Court costs were taxed against
the Defendants.

It further appearing to the Court that the total
costs amount to \$244.15; that the City of Montgomery has
deposited with the Clerk of this Court \$81.38, one third of
the total costs; and that the Montgomery City Lines, Inc.,
has deposited with the Clerk of this Court \$81.38, one third
of the total costs,

It is therefore ORDERED that the Clerk of this
Court disburse and pay out of the Registry Fund Account

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE

DISTRICT OF ALABAMA, NORTHERN DIVISION

AURELIA S. BROWDER, and)
SUSIE McDONALD and)
CLAUDETTE COLVIN, by Q. P.)
Colvin, next friend, and)
MARY LOUISE SMITH, by Frank)
Smith, next friend, and)
others similarly situated,)

Plaintiffs)

vs.)

NO. 1147)

W. A. GAYLE, CLYDE SELLERS)
and FRANK PARKS, individually)
and as members of the Board)
of Commissioners of the City)
of Montgomery, Alabama, and)
GOODWYN J. RUPPENTHAL, individually)
and as Chief of Police of the City)
of Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a Corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and)
C. C. (JACK) OWEN, JIMMY HITCHCOCK,)
and SIBYL POOL, as members of the)
ALABAMA PUBLIC SERVICE COMMISSION,)

Defendants)

FILED
R. E. Johnson
By _____
Deputy Clerk

Before RIVES, Circuit Judge, and LYNNE and JOHNSON, District Judges:

RIVES, Circuit Judge:

STATEMENT OF THE CASE

The purpose of this action is to test the constitutionality of both
the statutes of the State of Alabama ^{1/} and the ordinances of the City of

1/ Title 48, §301 (31a,b,c), Code of Alabama of 1940, as amended, which provide:

"Sec. 301(31a). Separate accommodations for white and colored races. - All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and, if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and, for such refusal, neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction,

2/
Montgomery which require the segregation of the white and colored races on the motor buses of the Montgomery City Lines, Inc., a common carrier of passengers in said City and its police jurisdiction.

1/ (Continued)

shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

"The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

"Sec. 301(31b). Operators of passenger stations and carriers authorized to segregate white and colored races. - All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, §1, appvd. July 18, 1947.)

"Sec. 301(31c). Failure to comply with rules and regulations as to segregation of white and colored races. - It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulation, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company, or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles carrying passengers for hire, of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation, or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for such offense. (1947, p. 40, §2, appvd. July 18, 1947.)"

2/ Section 10, Chapter 6, Code of the City of Montgomery, 1952, which provides:

"Every person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the negroes, where there are both white and negroes on the same car; provided, however, that negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people.

"Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit."

The plaintiffs are four Negro citizens who bring this action for themselves and on behalf of all other Negroes similarly situated.^{3/} The defendants are the members of the Board of Commissioners and the Chief of Police of the City of Montgomery, the members of the Alabama Public Service Commission, The Montgomery City Lines, Inc., and two of its employee drivers.

Each of the four named plaintiffs has either been required by a bus driver or by the police to comply with said segregation laws or has been arrested and fined for her refusal so to do. The plaintiffs, along with most other Negro citizens of the City of Montgomery, have since December 5, 1955, and up to the present time, refrained from making use of the transportation facilities provided by Montgomery City Lines, Inc. Plaintiffs and other Negroes desire and intend to resume the use of said buses if and when they can do so on a non-segregated basis without fear of arrest.

The members of the Board of Commissioners and the Chief of Police of the City of Montgomery in their answers to the complaint admit "that they seek to enforce the statutes of the State of Alabama and the ordinances of the City of Montgomery, Alabama", and further aver that "segregation of privately owned buses within cities within the State of Alabama is in accordance with the laws of the State of Alabama and the City of Montgomery."

The members of the Alabama Public Service Commission deny that they, in their official capacities as such members have any jurisdiction over, or have issued any orders relating to the separation of the races on buses operated wholly within the City of Montgomery and its police jurisdiction. On information and belief they allege that the members of the Board of Commissioners and the Chief of Police of said City "have sought to enforce by legal means constitutional and valid statutes and ordinances providing for separate but equal seating arrangements on buses operated in the City of Montgomery, Alabama, and its police

2/ (Continued)

Section 11 of Chapter 6, Montgomery City Code of 1952, further provides:

"Any employee in charge of a bus operated in the city shall have the powers of a police officer of the city while in actual charge of any bus, for the purpose of carrying out the provisions of the preceding section, and it shall be unlawful for any passenger to refuse or fail to take a seat among those assigned to the race to which he belongs, at the request of any such employee in charge, if there is such a seat vacant."

3/ Rule 23(a), F.R.C.P.

jurisdiction".

The Montgomery City Lines, Inc., admits that it has operated, and pursuant to orders of a State Court, continues to operate "its buses as required by the Statutes and Ordinances set out in the Complaint requiring it to provide equal but separate accommodations for the white and colored races". Without dispute the evidence is to the effect that, other than being separate, such accommodations are equal.

The defendants, Blake and Cleere, admit they are employees of the Montgomery City Lines and drivers of its buses, that as such they have acted pursuant to orders of said Company which "has operated its buses on the basis of racial segregation as required by said statutes and ordinances". They deny that as drivers of said buses they are exercising the powers of police officers in the enforcement of said statutes and ordinances.

The complaint prays for the convening of a three-judge district court as provided by Title 28 of the United States Code, §2284; for a declaratory judgment as to whether the enforcement of said statutes and ordinances abridges the privileges and immunities of plaintiffs as citizens of the United States, or deprives them of liberty without due process of law, or denies to them the equal protection of the laws, as secured by the Fourteenth Amendment to the Constitution of the United States,^{4/} and the rights and privileges secured to them by Title 42, United States Code, §§1981 and 1983.^{5/} The complaint further

4/ Fourteenth Amendment, §1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

5/ "Section 1981. Equal rights under the law.

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

"Section 1983. Civil action for deprivation of rights.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof

prays that the defendants be both temporarily and permanently enjoined from enforcing the statutes and ordinances claimed to be unconstitutional and in conflict with said Federal statutes.

FEDERAL JURISDICTION

Federal jurisdiction is invoked under Title 28, United States Code, §§1331 and 1343(3), ^{6/} and under Title 42, United States Code, §§1981 and 1983, footnote 5, supra. We think that the validity of both the State statutes and the City ordinances is in question, but if only the City ordinances are involved, Federal jurisdiction would still exist because the Constitution and statutes of Alabama authorize the adoption of City ordinances "not inconsistent with the laws of the State", ^{7/} and because the constitutional phrase "equal protection of the laws" refers to City ordinances adopted under State authority as well as to State ^{8/} statutes.

5/ (Continued)

to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

6/ "Section 1331. Federal question; amount in controversy.

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

"Section 1343. Civil rights.

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

7/ Constitution of Alabama of 1901, §89; Alabama Code of 1940, Title 37, §455.

8/ Buchanan v. Warley, 245 U.S. 60; Cf. 42 U.S.C.A. 1983; Carlson v. People of California, 310 U.S. 106; Lovell v. City of Griffin, 303 U.S. 444; North American Cold Storage Co. v. Chicago, 211 U.S. 306; El Paso v. Texas Cities Gas Co., 5th Cir., 100 F.2d 501.

JURISDICTION OF THREE JUDGE DISTRICT COURT

A three judge district court is required for the granting of "an interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State". 22 U.S.C.A. 2281. According to the complaint and the answers, the separation of the races on the buses is required both by State statutes and by City ordinances. Admittedly, therefore, State statutes are involved. The defendants claim, however, that the statutes and ordinances are being enforced by municipal officers only, and not by "any officer of such State". 28 U.S.C.A. 2281, supra.

If the members of the Alabama Public Service Commission are proper parties defendant, a matter to be hereinafter discussed, then it must be conceded that the objection to the jurisdiction of the three judge district court fails. Irrespective of the answer to that question, however, we think that the three judge district court has jurisdiction.

The State statutes, footnote 1, supra, vest in the defendant bus drivers the authority to enforce, and, notwithstanding their insistence to the contrary, we think that when so engaged the bus drivers clearly are officers of the State.

The City Commissioners have important duties to perform in connection with the enforcement, operation, and execution of State statutes. Under Alabama law, a municipal corporation "is essentially a public agency, a local unit of government, invested with a portion of the sovereign power of the State, for the benefit of its inhabitants." Cooper v. Town of Valley Head, 212 Ala. 125; 101 So. 874, 875. The defendant Chief of Police has authority to make arrests for violations of State statutes, 1940 Code of Alabama, Title 15, §152. The City Recorder in criminal cases has the power of an ex-officio justice of the peace. 1940 Code of Alabama, Title 37, §585. All of the City officials admit in their answers that they are enforcing the State statutes. An official, though localized by his geographic activities and the mode of his selection, is performing a State function when he enforces a statute which "embodies a policy of statewide concern."^{9/}

^{9/} Spelman Motor Sales Co. v. Dodge, 295 U.S. 89; Rorick v. Commissioners, 307 U.S. 208, 212; Cleveland v. United States, 323 U.S. 329, 332; Watch Tower Bible & Tract Society v. Bristol, D.Ct. Conn., 24 F.S. 57, affirmed 305 U.S. 572; Suncrest Lumber Co. v. N.C. Park Commission, 4th Cir., 29 F.2d 823.

10/

Very clearly, the three judge district court has jurisdiction.

COMITY

The defendants, relying on Alabama Public Service Commission v. Southern Railway Co., 341 U.S. 341, insist that even if the Federal court has jurisdiction, it should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is that that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts.

PARTIES

Without repeating the averments of the complaint we hold that they are clearly sufficient to constitute this a class action on behalf of the four individual plaintiffs and of all other Negro citizens similarly situated. See Rule 23(a), F.R.C.P.

It was probably not necessary for the plaintiffs to sue the members of the Board of Commissioners and the Chief of Police, not only as such but also individually, when no relief is sought against them by way of damages. If, however, the plaintiffs' contentions are sustained, these defendants are acting not only in their capacities as municipal officers, but also as officers of the State; and, further, are possibly transcending the scope of their office in any capacity when they compel obedience to statutes and ordinances attacked as unconstitutional. Moreover, in issuing and enforcing an injunction, a court of equity acts in personam. If, as we trust will be true, no relief becomes necessary against any of them in their individual capacities, their joinder as individuals will prove harmless. The motion to strike said parties in their individual capacities is

10/ If, however, the proceedings were not such as to require the presence of three judges, the judgment would still be valid as the act of the court of one judge, since that judge concurs and joins in the rendition of the judgment. Commission v. Brasher Lines, 312 U.S. 621, 626; O'Malley v. U.S., 8th Cir., 128 F.2d 676, 687.

11/ Lane v. Wilson, 307 U.S. 268, 274; Mitchell v. Wright, 5th Cir., 154 F. 2d 924, 926; Romero v. Weakley, 9th Cir., 226 F. 2d 399, 402; Wilson v. Beebe, Dis. Ct. Del., 99 F.S. 418, 420. Cf. Doud v. Hodge, 350 U.S. 485, 487.

therefore denied.

The members of the Alabama Public Service Commission object to their joinder as parties defendant and move to dismiss the action as against them because they say that neither they nor the Commission have any jurisdiction over the buses which are being operated within the City of Montgomery and its police jurisdiction. ^{12/}

In the Act approved July 6, 1945, General Acts of Alabama 1945, p. 731, now carried into the pocket supplement of the 1940 Code of Alabama as Title 48, §301(31a), see footnote 1, supra, appears the following significant paragraph:

"The provisions of this section shall be administered and enforced by the Alabama Public Service Commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced."

Testifying as a witness, the President of the Alabama Public Service Commission admitted that on April 24, 1956, he sent a telegram to the National City Lines of Chicago, of which the Montgomery City Lines, Inc., is a subsidiary, reading as follows:

"As President of the Alabama Public Service Commission, elected by the people of Alabama, sworn to uphold the segregation laws of this state, which include all forms of public transportation, I hereby defy ruling handed down by the United States Supreme Court ordering desegregation on public carriers. Alabama state law requiring segregation of the races on buses still stands. All public carriers in Alabama are hereby directed to strictly adhere to all present existing segregation laws in our state or suffer the consequences.

/s/ C.C. (Jack) Owen, President
Alabama Public Service"

That telegram was sent without the knowledge or concurrence of the other two Commissioners.

Since the 1945 Act expressly imposes on the Alabama Public Service Commission the duty of administering and enforcing its requirements as to segregation of the races, and since the President of the Commission has acted so positively and affirmatively to that end, the motion to dismiss the action as against the members of the Alabama Public Service Commission should be and the

^{12/} Compare Code of Alabama 1940, Title 48, §239 with §2 of the Alabama Motor Carrier Act of 1939 carried into the pocket supplement of the Alabama Code as Title 48, §301(2).

13/
same is hereby denied.

VALIDITY OF SEPARATE BUT EQUAL DOCTRINE AS
APPLIED TO INTRASTATE TRANSPORTATION

The ultimate question is whether the statutes and ordinances requiring the segregation of the white and colored races on the common carrier motor buses in the City of Montgomery and its police jurisdiction are unconstitutional and invalid. Unless prohibited by the Constitution of the United States, the power to require such segregation is reserved to the States or to the people.

- See Tenth Amendment.

In their private affairs, in the conduct of their private businesses, it is clear that the people themselves have the liberty to select their own associates and the persons with whom they will do business, unimpaired by the Fourteenth Amendment. *The Civil Rights Cases*, 109 U.S. 3. Indeed, we think that such liberty is guaranteed by the due process clause of that Amendment.

There is, however, a difference, a constitutional difference, between voluntary adherence to custom and the perpetuation and enforcement of that custom by law. *Shelley v. Kraemer*, 334 U.S. 1, 13. The Fourteenth Amendment provides that "No State shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Those provisions do not interfere with the police power of the States so long as the state laws operate alike upon all persons and property similarly situated. *Barbier v. Connolly*, 113 U.S. 27, 31, 32. That Amendment "merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Marchant v. Penn. Railroad*, 153 U.S. 380, 390. The equal protection clause requires equality of treatment before the law for all persons without regard to race or color. See e.g. *Strauder v. West Virginia*, 100 U.S. 303; *Buchanan v. Warley*, 245 U.S. 60; *Gong Lum v. Rice*, 275 U.S. 78; *Shelley v. Kraemer*, 334 U.S. 1.

13/ If, in law and fact, the Commission has no jurisdiction over the operation of the buses here involved, the retention of the members of the Commission as parties defendant will be harmless to them, even if erroneous.

In Plessy v. Ferguson, 163 U.S. 537, decided in 1896, the Supreme Court held as to intrastate commerce that a Louisiana statute requiring railway companies to provide equal but separate accommodations for the white and colored races was not in conflict with the provisions of the Fourteenth Amendment. That holding was repeatedly followed in later cases. Chesapeake and Ohio Ry. Co. v. Kentucky, 179 U.S. 388 (1900); Chiles v. Chesapeake & Ohio Ry. Co., 218 U.S. 71 (1910); McCabe v. A.T. & S.F. Ry. Co., 235 U.S. 151 (1914).

In Morgan v. Virginia, 328 U.S. 373 (1946), the Court held that a state statute requiring segregated seats for Negro passengers on interstate buses was an unconstitutional burden on interstate commerce. In Henderson v. United States, 339 U.S. 816 (1950) the Court held that interstate railroad regulations and practices assigning a separate table in a dining car to Negroes contravened the Interstate Commerce Act. The Court referred to the statutory right as "a fundamental right of equality of treatment", and cited cases construing the Fourteenth Amendment, see 339 U.S. 825, though the Court did not reach the constitutional question. The reasoning applied was similar to that employed in Shelley v. Kraemer, 324 U.S. 1, 22, where the Court recognized that the underlying philosophy of the Fourteenth Amendment is the equality before the law of each individual.

In the field of college education, beginning in 1938 and continuing to the present time, the Court has first weakened the vitality of, and has then destroyed, the separate but equal concept. Missouri ex rel Gaines v. Canada, 305 U.S. 337 (1938); Sipuel v. Board of Regents of Univ. of Oklahoma, 332 U.S. 631 (1948); Fisher v. Hurst, 333 U.S. 147 (1948); Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950); Hawkins v. Board of Control of University of Florida, 347 U.S. 971 (1954); Tureaud v. Board of Supervisors of L.S.U., 347 U.S. 971 (1954); Lucy v. Adams, 350 U.S. 1 (1955); Florida ex rel Hawkins v. The Board of Control, 350 U.S. 413; Board of Trustees of the University of N.C. v. Frasier, 350 U.S. 979 (1956).

The separate but equal concept had its birth prior to the adoption of the Fourteenth Amendment in the decision of a Massachusetts State court relating to public schools. Roberts v. City of Boston, 59 Mass. (5 Cush) 198 (1849). The doctrine of that case was followed in Plessy v. Ferguson, *supra*. In the School Segregation Cases, Brown v. Board of Education, 347 U.S. 483 (1954) and Bolling v. Sharpe, 347 U.S. 497 (1954) the separate but equal doctrine was repudiated

in the area where it first developed, i.e., in the field of public education. On the same day the Supreme Court made clear that its ruling was not limited to that field when it remanded "for consideration in the light of the Segregation Cases * * * and conditions that now prevail" a case involving the rights of Negroes to use the recreational facilities of city parks. Muir v. Louisville Park Theatrical Association, 347 U.S. 971 (1954).

Later the Fourth Circuit expressly repudiated the separate but equal doctrine as applied to recreational centers. Dawson v. Mayor and City of Baltimore, 4th Cir., 220 F. 2d 386, 387. Its judgment was affirmed by the Supreme Court, 350 U.S. 877. The doctrine has further been repudiated in holdings that the cities of Atlanta and of Miami cannot meet the test by furnishing the facilities of their municipal golf courses to Negroes on a segregated basis. Rice v. Arnold, 340 U.S. 848; Holmes v. City of Atlanta, 350 U.S. 879.

Even a statute can be repealed by implication. A fortiori, a judicial decision, which is simply evidence of the law and not the law itself, may be so ^{14/} impaired by later decisions as no longer to furnish any reliable evidence.

14/ This principle is aptly illustrated by the difference with which the Fourth Circuit treated Plessy v. Ferguson as a binding precedent in 1950, Boyer v. Garrett, 183 F. 2d 582 and in 1955, Flemming v. South Carolina Electric & Gas Co., 224 F. 2d 752. In their change of views that distinguished Court headed by Chief Judge Parker was governed by the rule best stated by Judge Parker himself, speaking for a three judge district court in Barnette v. West Virginia State Board of Education, 47 F.S. 251, 252-3:

"Ordinarily we would feel constrained to follow an unreversed decision of the Supreme Court of the United States, whether we agreed with it or not. It is true that decisions are but evidences of the law and not the law itself; but the decisions of the Supreme Court must be accepted by the lower courts as binding upon them if any orderly administration of justice is to be attained. The developments with respect to the Gobitis case, however, are such that we do not feel that it is incumbent upon us to accept it as binding authority. Of the seven justices now members of the Supreme Court who participated in that decision, four have given public expression to the view that it is unsound, the present Chief Justice in his dissenting opinion rendered therein and three other justices in a special dissenting opinion in Jones v. City of Opelika, 316 U.S. 584, 62 S. Ct. 1231, 1251, 86 L. Ed. 1691. The majority of the court in Jones v. City of Opelika, moreover, thought it worth while to distinguish the decision in the Gobitis case, instead of relying upon it as supporting authority. Under such circumstances and believing, as we do, that the flag salute here required is violative of religious liberty when required of persons holding the religious views of plaintiffs, we feel that we would be recreant to our duty as judges, if through a blind following of a decision which the Supreme Court itself has thus impaired as an authority, we should deny protection to rights which we regard as among the most sacred of those protected by constitutional guaranties."

To like effect is the opinion of Judge Frank for the Second Circuit in Perkins v. Endicott Johnson Corporation, 128 F. 2d 208, 217-218:

"We would stultify ourselves and unnecessarily burden the Supreme Court

We cannot in good conscience perform our duty as judges by blindly following the precedent of Plessy v. Ferguson, supra, when our study leaves us in complete agreement with the Fourth Circuit's opinion^{15/} in Fleming v. South Carolina Electric and Gas Co., 224 F. 2d 752, appeal dismissed April 24, 1956, _____ U.S. _____, that the separate but equal doctrine can no longer be safely followed as a correct statement of the law. In fact, we think that Plessy v. Ferguson has been impliedly, though not explicitly, overruled, and that, under the later decisions, there is now no rational basis upon which the separate but equal doctrine can be validly applied to public carrier transportation within the City of Montgomery

14/ (Continued)

if--adhering to the dogma, obviously fictional to any reader of its history, that alterations in that court's principles of decision never occur unless recorded in explicit statements that earlier decisions are overruled--we stubbornly and literally followed decisions which have been, but not too ostentatiously, modified. 'The life of the law,' as Mr. Justice Holmes said, 'has been experience.' Legal doctrines, as first enunciated, often prove to be inadequate under the impact of ensuing experience in their practical application. And when a lower court perceives a pronounced new doctrinal trend in Supreme Court decisions, it is its duty, cautiously to be sure, to follow not to resist it." See also United States v. Girouard, 1st Cir., 149 F. 2d 760, 765, dissenting opinion of Judge Woodbury, reversed 328 U.S. 6; New Eng. Mutl. Life Ins. Co. v. Welch, 1st Cir., 153 F. 2d 260, 262; Picard v. United Aircraft Corp., 128 F.S. 632, 636; opinion by Judge Learned Hand; Spector Motor Service v. Walsh, 2nd Cir., 139 F.S. 809, 814, opinion by Circuit Judge Clark; Gardella v. Chandler, 2nd Cir., 172 F. 2d 402, 409; United States v. Ullum, 2d Cir., 221 F. 2d 760, 762; "The Attitude of Lower Courts to Changing Precedents", 50 Yale L.J. 1448.

15/ That opinion is entitled to great respect, especially in view of the distinction and learning of the judges who compose that Court, Circuit Judges Parker, Soper and Dobie.

and its police jurisdiction. The application of that doctrine cannot be justified as a proper execution of the state police power. 16/

We hold that the statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States. This holding does not, however, become effective until the entry of formal judgment. The parties are requested to submit to the Court in writing within two weeks from the date of this opinion their views as to the form of judgment to be entered, and as to whether such judgment should be stayed in the event of an appeal.

16/ Shelley vs. Kraemer, 334 U.S. 1, 21; Morgan vs. Virginia, 328 U.S. 373, 380; Buchanan vs. Warley, 245 U.S. 60, 74; City of Birmingham vs. Monk, 5th Cir., 185 F. 2d 859, 862.

This the 5th day of June, 1956.



UNITED STATES CIRCUIT JUDGE



UNITED STATES DISTRICT JUDGE

~~UNITED STATES DISTRICT JUDGE~~

LYNNE, District Judge, dissenting:

Only a profound, philosophical disagreement with the ultimate conclusion of the majority "that the separate but equal doctrine can no longer be safely followed as a correct statement of the law" would prompt this, my first dissent. But I should consider myself recreant both to conscience and duty in withholding my views because of the affection and esteem which I bear for my associates.

For many years as a trial judge in the state and federal systems I have endeavored faithfully to understand and apply precedents established by the opinions of appellate courts. This was not a blind obedience to a legalistic formula embodied in the rule of stare decisis. It was the result of a simple belief that the laws which regulate the conduct, the affairs, and sometimes the emotions of our people should evidence not only the appearance but also the spirit of stability.

Judges of trial courts frequently find themselves in disagreement with the rationale of an old, but clearly controlling precedent. That is so because their positions do not insulate them from those changing physical and metaphysical concepts which form a part of the life process. But they are neither designed nor equipped to perform the legislative function of putting off the old and putting on the new. To arrogate to themselves this prerogative, in my humble opinion, would be the first, fatal step in making hollow the proud boast that ours is a "government of laws and not of men."

Judge Rives, just the other day, delivering the opinion of the Court of Appeals for the Fifth Circuit, sitting en banc,

in Howard v. United States, _____ F.2d _____ (April 20, 1956),

stated my position, clearly and concisely:

"In the face of such recognition by the Supreme Court of a test of criminal responsibility, we do not feel at liberty to consider and decide whether in our opinion the recent modification of such test in the District of Columbia is sound or unsound, nor whether some other test should be adopted. This Circuit follows the law as stated by the Supreme Court and leaves any need for modification thereof to that court," (Emphasis supplied.)

The majority recognize, it was conceded in oral arguments by counsel for plaintiffs, that Plessy v. Ferguson, 163 U.S. 537 (1896) is precisely in point, and that its holding has been repeatedly followed in later transportation cases. ^{1/} Its authority obviously was unaffected by the action of the Supreme Court in dismissing the appeal in South Carolina Electric & Gas Co. v. Flemming, _____ U.S. _____, 24 L.W. 3280. The citation of Slaker v. O'Connor, 278 U.S. 188, is convincing that it did not place the stamp of its approval upon the decision of the Fourth Circuit in Flemming v. South Carolina Electric & Gas Co., 224 F.2d 752, but simply concluded that its judgment was not final and hence that the appeal did not lie. 28 U.S.C.A. 1254(2).

In complete agreement with the Fourth Circuit's opinion in Flemming that the separate but equal doctrine can no longer be safely followed as a correct statement of the law, the majority conclude that Plessy v. Ferguson, in which that doctrine made its first appearance sixty years ago, has been impliedly, though not explicitly overruled. While I share their great respect for Judges Parker, Soper and Dobie, I do not at all agree.

1/ Chesapeake & Ohio Ry. Co. v. Kentucky, 179 U.S. 388 (1900);
Chiles v. Chesapeake & Ohio Ry. Co., 218 U.S. 71 (1910);
McCabe v. A.T. & S.F. Ry. Co., 235 U.S. 151 (1914).

A comparatively new principle of pernicious implications has found its way into our jurisprudence.^{2/} Lower courts may feel free to disregard the precise precedent of a Supreme Court opinion if they perceive a "pronounced new doctrinal trend" in its later decisions which would influence a cautious judge to prophesy that in due time and in a proper case such established precedent will be overturned explicitly. Peculiarly appropriate in this context is the following language of Judge Woodbury, writing for the First Circuit in New England Mutual Life Ins. Co. v. Welch, 153 F.2d 260, 262:

"Furthermore we find no indication from anything said therein of a purpose to depart from the rule of the earlier decisions cited above. Under these circumstances we see no occasion even to consider the basic question whether we would adopt the doctrine of Barnette v. West Virginia State Board of Education, D.C. 47 F. Supp. 251, 253, and Spector Motor Service v. Walsh, 2 Cir., 139 F.2d 809, 817, 823, and in extraordinary situations disregard controlling decisions of the Supreme Court not yet explicitly overruled. It will suffice to say that we would feel disposed to consider taking such a course only when there are the clearest indications that the controlling decisions of the Supreme Court, though not formally overruled, would no longer be followed by that Court and we find no such indications here."

In 1950, the Fourth Circuit had before it the case of Boyer, et al v. Garrett, et al, 163 F.2d 582, involving an officially adopted rule providing for the segregation of races in athletic activities in the public parks and playgrounds in the City of Baltimore. In affirming the judgment of the District Court, the same judges who decided Flemming held:

"The contention of plaintiffs is that, notwithstanding this equality of treatment, the rule providing for segregation is violative of the provisions of the federal Constitution. The District Court dismissed the complaint on the

2/ Barnette v. West Virginia State Board of Education, 47 F. Supp. 251 (1942); Perkins v. Endicott Johnson Corporation, 128 F.2d 208 (1942); Spector Motor Service v. Walsh, 139 F.2d 809 (1943); Gardella v. Chandler, 172 F.2d 402, 409 (1949); United States v. Ullmann, 221 F.2d 760 (1955); United States v. Girouard, 149 F.2d 760 (1945); 50 Yale Law Journal 1448.

authority of Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256; and the principal argument made on appeal is that the authority of Plessy v. Ferguson has been so weakened by subsequent decisions that we should no longer consider it as binding. We do not think, however, that we are at liberty thus to disregard a decision of the Supreme Court which that court has not seen fit to overrule and which it expressly refrained from reexamining, although urged to do so, in the very recent case of Sweatt v. Painter, 70 S.Ct. 848. It is for the Supreme Court, not us, to overrule its decisions or to hold them outmoded."

In 1955, in Flemming, an intrastate transportation case, reversing the district judge, the court wrote:

"We do not think that the separate but equal doctrine of Plessy v. Ferguson, supra, can any longer be regarded as a correct statement of the law. That case recognizes segregation of the races by common carriers as being governed by the same principles as segregation in the public schools; and the recent decisions in Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 and Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884, which relate to public schools, leave no doubt that the separate but equal doctrine approved in Plessy v. Ferguson has been repudiated. That the principle applied in the school cases should be applied in cases involving transportation, appears quite clearly from the recent case of Henderson v. United States, 339 U.S. 816, 70 S.Ct. 843, 94 L. Ed. 1302, where segregation in dining cars was held violative of a section of the interstate commerce act providing against discrimination."

Within this five year interval the Supreme Court had spoken pertinently but once, in the case of Brown v. Board of Education, 347 U.S. 483, since Bolling v. Sharpe, 347 U.S. 497, did not discuss Plessy v. Ferguson and appears to have been decided on a parity of reasoning. My study of Brown has convinced me that it left unimpaired the "separate but equal" doctrine in a local transportation case and I perceive no pronounced new doctrinal trend therein.

Of course I appreciate the care with which the Supreme Court limits its pronouncements upon great constitutional questions to the narrow issues before it and the only issue in Brown involved a collision between the Fourteenth Amendment and state laws commanding segregation in the public schools. But

in Brown the Court's opinion referred to Plessy v. Ferguson six times and to its "separate but equal" doctrine on four occasions. It epitomized its concept of that doctrine as follows: "Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate." Its ultimate conclusion was, and this I conceive to be the rationale of its decision, "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

It seems to me that the Supreme Court therein recognized that there still remains an area within our constitutional scheme of state and federal governments wherein that doctrine may be applied even though its applications are always constitutionally suspect and for sixty years it may have been more honored in the breach than in the observance. Granted that the trend of its opinions is to the effect that segregation is not to be permitted in public facilities furnished by the state itself and the moneys of the state, as in the case of public schools, or public parks, cf. Muir v. Louisville Park Theatrical Association, 347 U.S. 971; Dawson v. Mayor and City of Baltimore, 220 F. 2d 386, affirmed 350 U.S. 877, or municipal golf courses, cf. Rice v. Arnold, 340 U.S. 848; Holmes v. City of Atlanta, 350 U.S. 879, on the plain theory that if the state is going to provide such facilities at all, it must provide them equally to the citizens, it does not follow that it may not be permitted in public utilities holding nonexclusive franchises.

If that doctrine has any vitality, this is such a case in which it has been applied fairly. According to its teaching not absolute, but substantial equality is required. Such equality is not a question of dogma, but one of fact.

Under the undisputed evidence adduced upon the hearing before us practices under the laws here attacked have resulted in providing the races not only substantially equal but in truth identical facilities.

In my opinion the holding of the Court in Morgan v. Virginia, 328 U.S. 373, that the attempt of a state to require the segregation of passengers on interstate busses results in the imposition of an undue burden on interstate commerce is wholly irrelevant to the issue before us. And equally inapposite is reference to Henderson v. United States, 339 U.S. 816, which held that rules and practices of interstate railroad carriers requiring the segregation of passengers in dining cars were offensive to Section 3(1) of the Interstate Commerce Act making it unlawful for a railroad in interstate commerce "to subject any particular person, . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever:"

The supremacy of the federal government in matters affecting interstate commerce is axiomatic. Cases involving the exercise of its power in that realm shed no light on Fourteenth Amendment problems. It does seem quite clear that by its terms the Congress is given the power and duty to enforce the Fourteenth Amendment by legislation. Thus the Congress would have the power, thus derived, to proscribe segregation in intrastate transportation. It is worthy of note that for sixty years it has not seen fit to do so.

While any student of history knows that under our system of government vindication of the constitutional rights of the individual is not, and ought not to be, entrusted to the Congress, its reticence to intrude upon the internal affairs of the several states should caution us against doing so where

the path of duty is not plainly marked and when we must hold a clear precedent of the Supreme Court outmoded.

Because I would dismiss the action on the authority of Plessy v. Ferguson, I do not reach the procedural questions discussed in the majority opinion. I respectfully dissent.

Seaborn A. Leno
UNITED STATES DISTRICT JUDGE

Recd Copy.
Walter J. ...
attorney for city officials.

Received a copy
Paul W. Gray
attorney for the Plaintiffs

Received copy of opinion
William W. McPhee
assistant atty Gen
Stab 7 a/c.

May 16

19 57

UNITED STATES OF AMERICA))
MIDDLE DISTRICT OF ALABAMA) ss:

R. C. Dobson
Mr. ~~Robert Street, Clerk~~, Clerk

U. S. District Court, Montgomery, Ala.

TO THE UNITED STATES OF AMERICA

For Services of the United States Marshal in the Case of

Aurelia S. Browder, et al vs W. A. Gayle, et al

Marshal's Civ. No.	Date of Writ	Nature of fees and expenses charged	Marshal's Fees and Expenses	
C-1182	2/1/56	Serving 11 Summons and complaints	\$22	00
		Mileage serving		80
	5/9/56	Serving 18 pl. subpoenas	9	00
		Mileage serving		90
	12/20/56	Serving 11 Injunctions	22	00
		Mileage serving		70
			\$55	40
		Advance to witnesses;		
		W. A. Gayle - - - - -	\$4.00	
		Clyde Sellers - - - - -	4.00	
		Frank Parks - - - - -	4.00	
		G. J. Ruppenthal - - - - -	4.00	
		C. C. Owen - - - - -	4.00	
		Sybil Poole - - - - -	4.00	
		Jimmie Hitchcock - - - - -	4.00	
		J. F. Blake - - - - -	4.00	
		Robt. Cleere - - - - -	4.00	
		R. C. Mills - - - - -	4.00	
		Jack Crenshaw - - - - -	4.00	
		E. D. Lowe - - - - -	4.00	
		Wm. Thetford - - - - -	4.00	
		L. W. Hollowell - - - - -	4.00	
		R. H. Matthews - - - - -	4.00	
		Geo. H. Jones - - - - -	4.00	
		Mtg. City Lines and		
		J. H. Bagley not advanced fee.		
		Total cost - -	\$119	40
T				

May 16

19 57

UNITED STATES OF AMERICA)
MIDDLE DISTRICT OF ALABAMA) ss:

Mr. R. C. Dobson
~~Food Products Corp.~~, Clerk

U. S. District Court, Montgomery, Ala.

TO THE UNITED STATES OF AMERICA

For Services of the United States Marshal in the Case of

Aurelia S. Browder, et al vs W. A. Gayle, et al

Marshal's Civ. No.	Date of Writ	Nature of fees and expenses charged	Marshal's Fees and Expenses	
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		Mileage serving		70
			\$55	40
		Advance to witnesses;		
		W. A. Gayle - - - - -	\$4.00	
		Clyde Sellers - - - - -	4.00	
		Frank Parks - - - - -	4.00	
		G. J. Ruppenthal - - - - -	4.00	
		C. C. Owen - - - - -	4.00	
		Sybil Poole - - - - -	4.00	
		Jimmie Hitchcock - - - - -	4.00	
		J. F. Blake - - - - -	4.00	
		Robt. Cleere - - - - -	4.00	
		R. C. Mills - - - - -	4.00	
		Jack Crenshaw - - - - -	4.00	
		E. D. Lowe - - - - -	4.00	
		Wm. Thetford - - - - -	4.00	
		L. W. Hollowell - - - - -	4.00	
		R. H. Matthews - - - - -	4.00	
		Geo. H. Jones - - - - -	4.00	
		Mtg. City Lines and J. H. Bagley not advanced fee.		
		Total cost - -	\$119	40
T			64	00

MIDDLE DISTRICT OF ALABAMA
OFFICE OF
CLERK, UNITED STATES DISTRICT COURT
MONTGOMERY 1, ALA.
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300
(PMGC)

Hon. Walter J. Knabe
Attorney at Law
Hill Building
Montgomery, Alabama.

Received 19 June 1956

Kupke + Nashua
by Herman H. Hamilton

MIDDLE DISTRICT OF ALABAMA
OFFICE OF
CLERK, UNITED STATES DISTRICT COURT
MONTGOMERY 1, ALA.
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300
(PMGC)

Hon. Robert Thrun
Attorney at Law
40 Pine St.
N. Y. N. Y.

Rec'd
Robert Thrun

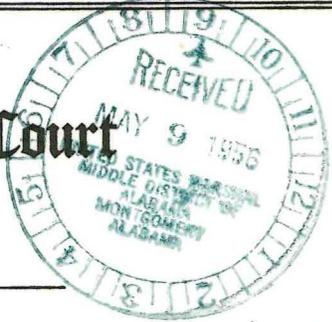
Copies mailed to:
John Patterson
Fred Gray
Chas. S. Sanford

"A subpoena may be served by the marshal, **CIVIL SUBPOENA** any other person who is not a party and who is not less than 18 years of age. It is the duty of a subpoenaed person to be delivered a copy thereof to the person named and by tendering to him the fee for 1-day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 17a)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Mr. James F. Blake,
701 N. McDonough St.,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama, at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By *Issie Johnson*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 9, 1956 at 701 N. McDonough St., Montgomery, Ala. served it on the within named James F. Blake by delivering a copy to him, and tendering to him the fee for one day's attendance and the mileage allowed by law. 2:00 pm (adv. \$4.00).

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By *James W. Busby*

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

RETURNED AND FILED

MAY 16 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 _____

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

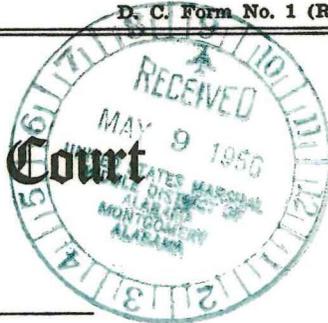
CIVIL SUBPOENA

"A subpoena may be served by the marshal, by his deputy or by any other person who is duly sworn and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 17d) 45c

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1149-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Mr. Robert Cleere,
701 N. McDonough St.,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By Annie Pollock
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 10, 1956 at 701 No. McDonough St., Montgomery, Ala. I served it on the within named Robert Cleere by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 9:30 am (adv \$4.00).

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal

By James W. Berry
RETURNED AND FILED

Service Fees	
Travel	.....\$ .20
Services	......50
Total	.....\$ <u>.70</u>

MAY 10 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a

this

day of _____, 19__

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.



United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al
vs.
W. A. Gayle, et al

To Mr. J. H. Bagley,
701 N. McDonough St.,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama, at 2nd Floor, Post Office Bldg., in the city of Montgomery, Alabama on the 11th day of May, 1956, at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk.
By *Annice Johnson*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 9, 1956 at 926 S. Ryan St., Montgomery, Ala. I served it on the within named J. H. Bagley by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. Advance refused. 3:40 pm.

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal

By *James W. Busby*

Service Fees	
Travel	.....\$ .70
Services	..... .50
Total	.....\$ 1.20

MAY 11 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19 .

this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

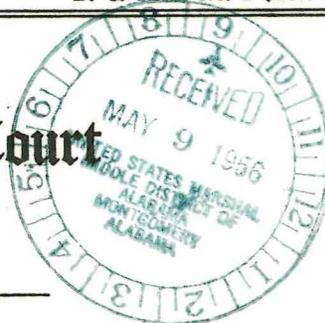
"A subpoena may be served by the marshal, by his deputy or by any other person who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 17)

MID-ALB. MARSHAL'S NO. C-1182

D. C. Form No. 1 (Rev. 1-51)

United States District Court

FOR THE



CIVIL

45c MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Mr. Reynolds C. Mills,
701 N. McDonough St.,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg., in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By Annie Schorker
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 9, 1956 at 701 N. McDonough St., Montgomery, Ala I served it on the within named Reynolds C. Mills by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 2:05 pm (\$adv \$4.00)

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By James W. H...
MAY 16 1956
O. D. STREET, JR.
CLERK

Service Fees

Travel\$
Services	..... .50
Total	.....\$ .50

Subscribed and sworn to before me, a

this

day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, his deputy or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of ~~Civil~~ Procedure ~~21~~)

CIVIL SUBPOENA

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



2111

454

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Attorney Jack Crenshaw,
1st National Bank Building,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama, at 2nd Floor, Post Office Bldg., in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk
By Annie Johnson
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 10, 1956 at 1st Nat'l Bank Bldg, Montgomery, Ala. I served it on the within named Jack Crenshaw by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 1:10 pm (adv \$4.00).

Dated May 11, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By James W. Burns
RETURNED AND FILED

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

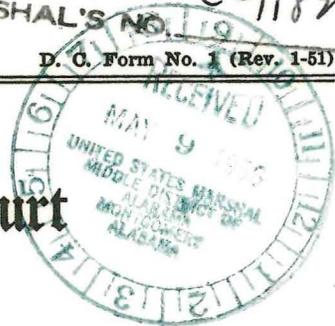
MAY 16 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 _____.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

0-1182



"A subpoena may be served by the marshal, **CIVIL SUBPOENA** any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of ~~Criminal~~ Procedure ~~11~~)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA

Civil 452

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Judge Eugene D. Loe,
32 South Perry Street,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floore, Post Office Bldg. in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk.

By *Jessie Schooler*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 10, 1956 at 32 So. Perry St., Montgomery, Ala. I served it on the within named Eugene D. Loe by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 1:20 pm (Adv \$4.00)

Dated May 11, 1956

CHARLES S. PRESCOTT, U.S. Marshal

By *Jessie Schooler*

RETURNED AND FILED

MAY 16 1956

O. D. STREET, JR.
CLERK

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

Subscribed and sworn to before me, a

this

day of , 19 .

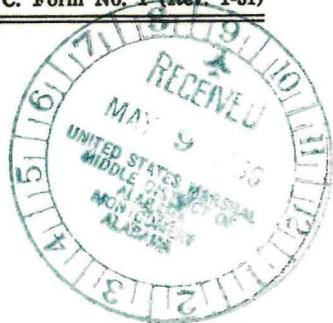
NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 47a)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



Civil

452

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al
vs.
W. A. Gayle, et al

To Mr. William Thetford,
Montgomery County Court House,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg., in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By *Annice Schoolar*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 10, 1956 at Montg Co. Ct House, Montgomery, Ala. I served it on the within named William Thetford by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 2:25 pm (adv \$4.00)

Dated May 11, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By *James W. ...*

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

MAY 10 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19 .

this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Civil Procedure 45)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



61411

454

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Mr. Lewis W. Hallowell,
Montgomery County Court House,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama, at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk.
By Annie Schooner
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 9, 1956 at Montg. County Ct. House, Montgomery, Ala. I served it on the within named Lewis W. Hallowell who claimed his real name is W. Hallowell by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 3:15 pm (\$adv \$4.00).

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By James W. Kinsley
RETURNED AND FILED

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

MAY 10 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19

this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

RACE RELATIONS LAW REPORTER
VANDERBILT UNIVERSITY
NASHVILLE 5, TENNESSEE

March 12, 1957

Mr. R. C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery 1, Alabama

In re: Browder v. Gayle, Civ. Action No. 1147-N

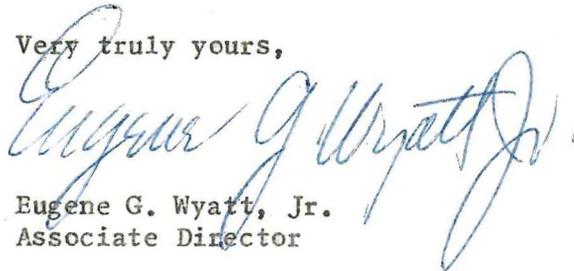
Dear Mr. Dobson:

This will acknowledge your letter of March 7, in which you enclosed a copy of order dismissing petition for instruction in the above styled case.

As per your statement, we are enclosing herewith twenty-five cents in payment therefor.

We appreciate very much your continued co-operation.

Very truly yours,



Eugene G. Wyatt, Jr.
Associate Director

EGW/ai

enc.

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF ALABAMA
OFFICE OF THE CLERK

RECEIVED
FROM

Nelson Keole

DOC.
NO.

D.A.# 1147-N

Place

Montgomery

Division

N

DATE

12/20/1956

CASE OR
PROCEEDING

Browder vs Gayle

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT
Clerk's Filing Fee		Registry	
Bankruptcy Filing Fee		Cash Bail	
Referees' Salary Fund		Tender	
Referees' Expense Fund		Restitution	
Miscel. Earnings		Other Moneys	
Admission of Attorney		Civil Judgment	
Copy-Compare	<i>50</i>	Costs	
Certificate		Fine	
Passport		Naturalization	
		Decl'n	
		Pe'n	

\$

Annice Schosler

Total ▶

DEPUTY CLERK

Cash

Check

MONEY ORDER

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DIVISION OF THE MIDDLE DISTRICT OF ALABAMA

Aurelia S. Browder, and
Susie McDonald and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated,

Plaintiffs

vs.

W. A. Gayle, Clyde Sellers,
and Frank Parks, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a corporation, and James F. Blake,
and Robert Cleere, and G. C. (Jack) Owen,
Jimmy Hitchcock, and Sibyl Pool, as
members of the Alabama Public Service
Commission,

Defendants

Civil Action

No. 1147-N

It appearing to the Court that on August 17, 1956,
the State of Alabama deposited in the Registry Fund of this
Court the sum of \$200.00, as a cash appeal bond for the
defendant-Appellants, the Alabama Public Service Commission
and the City of Montgomery.

It further appearing to the Court that on
December 20, 1956, an Order Affirming the Judgment of this
Court was filed in said cause by the Supreme Court of the
United States, and that the Court costs were taxed against
the Defendants.

It further appearing to the Court that the total
costs amount to \$244.15; that the City of Montgomery has
deposited with the Clerk of this Court \$81.38, one third of
the total costs; and that the Montgomery City Lines, Inc.,
has deposited with the Clerk of this Court \$81.38, one third
of the total costs,

It is therefore ORDERED that the Clerk of this
Court disburse and pay out of the Registry Fund Account

the sum of \$200.00, as follows:

To R. C. Dobson, Clerk, the remaining one third of the costs	\$81.39
To the State of Alabama, refund of the balance of the cash appeal bond	\$118.61

This the 16th day of May, 1957.

FRANK M. JOHNSON, JR.

UNITED STATES DISTRICT JUDGE

~~Pay To The Order of
The First National Bank,
1296 Montgomery, Ala, 1296
For Deposit Only
R. C. Dobson
Clerk, U. S. District Court
Deposit Fund~~

City of Montgomery Alabama

BOARD OF COMMISSIONERS

WILLIAM A. GAYLE
PRESIDENT OF THE COMMISSION
FRANK W. PARKS
COMMISSIONER OF PUBLIC WORKS
CLYDE C. SELLERS
COMMISSIONER OF PUBLIC AFFAIRS

May 9, 1957

Hon. R. C. Dobson, Clerk
United States District Court
Montgomery, Alabama

Re: Aurelia Browder et al. vs. W. A. Gayle
et al., Civil No. 1147-N

Dear Sir:

I enclose check number 4696 of the City of
Montgomery for \$81.38, same being one-third of the
costs in the above matter.

Very truly yours,



WJK:s
Enclosure

81.38

3

81.39

244.4

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE COLVIN,
by Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly situated,

Plaintiffs,

vs.

NO. 117

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C.C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

O R D E R

A "Petition for Instructions" having been presented to the Court by the Board of Commissioners of the City of Montgomery, Alabama, and the individual members thereof, it is now ordered by the Court that the Clerk furnish to each of the counsel of record for the plaintiffs and for the defendants in this cause a copy of such petition, together with the exhibits thereto. The Clerk may carry out this order by mailing such copy by registered mail to each of said attorneys. The Court will withhold action upon such petition for a period of at least three weeks from this date, during which said three weeks any of such counsel may, if they see fit, submit briefs to the Court on the propriety and authority of the Court to respond to said petition for instructions, together with briefs on the merits of such inquiry.

Done this the _____ day of January, 1957.

United States Circuit Judge

UNITED States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

ARDELIA B. FROWDER and)
BESSIE McDONALD and CLAUDETTE)
COLVIN, et al. P. COLVIN, next)
friend, and MRS. LOUISE SMITH,)
by FRANK SMITH, next friend, and)
other similarly situated,)
Plaintiffs,)

CIVIL ACTION

NO. 1147-N

W. A. GAYLE, CLIDE SELLERS, and)
FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and GOODWIN)
J. RUPPERTAL, individually and as)
Chief of Police of the City of)
Montgomery, Alabama, and THE)
MONTGOMERY CITY LINES, INC., a)
Corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and C. C. (JACK))
OLEN, JIMMIE WICKCOCK, and STEVE)
POOL, as members of the ALABAMA PUBLIC)
SERVICE COMMISSION,)
Defendants.)

ORDER DISMISSING PETITION FOR INSTRUCTIONS

The petition for instructions presented by the Board of Commissioners of the City of Montgomery, Alabama, on the 25th day of January, 1957, is dismissed for the reason that under the Constitution of the United States, Article III, § 2, this Court's jurisdiction is confined to actual cases or controversies, and it has no power to give advisory opinions, nor to decide abstract, hypothetical, or contingent questions. Federation of Labor v. McAdory, 325 U.S. 450, 461.

The Court being without jurisdiction, Judge Lynne feels that he should express no individual opinion. Judges Rives and Johnson feel that it will be of some public service if they express their opinions as individuals, of which they presently entertain no doubt, namely, that the word "private" as used in the third question is inappropriate, and that each of the three questions propounded should be answered "yes".

This the 27th day of February, 1957.


UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

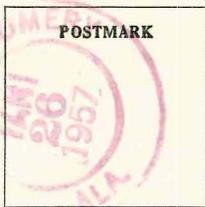
FILED

FEB 27 1957

A. C. DODSON
Clerk

By.....
Deputy Clerk

REGISTERED NO. 10879
Value \$ N.Y. Spec. del'y fee \$ _____
Fee \$ 40 Ret. receipt fee \$ 07
Surcharge \$ _____ Rest. del'y fee \$ _____
Postage \$ _____ Airmail
Postmaster, By WJZ
From Clerk U.S. Dist Court



To Hon Wm. W. McGuire
asst. att. Gen. State of Ala
City
POD Form 3806
Sept. 1955 c9-16-70493-2

REGISTERED NO. 10870
Value \$ N.Y. Spec. del'y fee \$ _____
Fee \$ 40 Ret. receipt fee \$ 07
Surcharge \$ _____ Rest. del'y fee \$ _____
Postage \$ _____ Airmail
Postmaster, By WJZ
From U.S. Dist Court



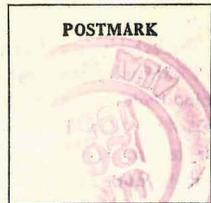
To Robt. Thoms atty.
20 Pine St. N.Y. City
POD Form 3806
Sept. 1955 c9-16-70493-2

REGISTERED NO. 10880
Value \$ N.Y. Spec. del'y fee \$ _____
Fee \$ 40 Ret. receipt fee \$ 07
Surcharge \$ _____ Rest. del'y fee \$ _____
Postage \$ _____ Airmail
Postmaster, By WJZ
From _____



To Hon. Gordon Madison
asst. att. General St. of Ala
City
POD Form 3806
Sept. 1955 c9-16-70493-2

REGISTERED NO. 10811
Value \$ _____ Spec. del'y fee \$ _____
Fee \$ _____ Ret. receipt fee \$ _____
Surcharge \$ _____ Rest. del'y fee \$ _____
Postage \$ _____ Airmail
Postmaster, By WJZ
From _____



To Mrs. Dora M. Hamilton
attn Hill Bldg. Montg. Ala
POD Form 3806
Sept. 1955 c9-16-70493-2

REGISTERED NO. 10881
Value \$ N.Y. Spec. del'y fee \$ _____
Fee \$ 40 Ret. receipt fee \$ 07
Surcharge \$ _____ Rest. del'y fee \$ _____
Postage \$ _____ Airmail
Postmaster, By WJZ
From _____



To Hon. John Patterson

REGISTERED NO. 10882
Value \$ 1.00 Spec. del'y fee \$
Fee \$.40 Ret. receipt fee \$.07
Surcharge \$ Rest. del'y fee \$
Postage \$ off Airmail
Postmaster, By *WJZ*
From *Clerk U.S. District Court*
To *Mr. Paul L. Carter, atty*
107 W. 43rd St. N.Y. N.Y.
POD Form 3806 Sept. 1955 c9-16-70493-2



REGISTERED NO. 10886
Value \$ 1.00 Spec. del'y fee \$
Fee \$.40 Ret. receipt fee \$.07
Surcharge \$ Rest. del'y fee \$
Postage \$ off Airmail
Postmaster, By *WJZ*
From *Clerk U.S. Dist. Court*
Montg Ala
To *Mr. Herman J. Hamlet*
atty Hill Bldg, Montg, Ala
POD Form 3806 Sept. 1955 c9-16-70493-2



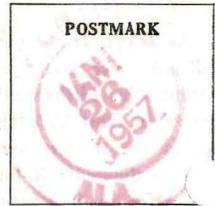
REGISTERED NO. 10883
Value \$ 1.00 Spec. del'y fee \$
Fee \$.40 Ret. receipt fee \$.07
Surcharge \$ Rest. del'y fee \$
Postage \$ off Airmail
Postmaster, By *WJZ*
From
To *Hon. W. G. Bloch, atty*
State Office Bldg, Montg, Ala
POD Form 3806 Sept. 1955 c9-16-70493-2



REGISTERED NO. 10887
Value \$ 1.00 Spec. del'y fee \$
Fee \$.40 Ret. receipt fee \$.07
Surcharge \$ Rest. del'y fee \$
Postage \$ off Airmail
Postmaster, By *WJZ*
From
To *Mr. Walter J. Knabe*
atty Hill Bldg, Montg, Ala
POD Form 3806 Sept. 1955 c9-16-70493-2



REGISTERED NO. 10884
Value \$ 1.00 Spec. del'y fee \$
Fee \$.40 Ret. receipt fee \$.07
Surcharge \$ Rest. del'y fee \$
Postage \$ off Airmail
Postmaster, By *WJZ*
From
To *Paul D. Gray atty*
113 Monroe St, Montg, Ala
POD Form 3806 Sept. 1955 c9-16-70493-2



REGISTERED NO. 10885
Value \$ 1.00 Spec. del'y fee \$
Fee \$.46 Ret. receipt fee \$
Surcharge \$ Rest. del'y fee \$
Postage \$ 1.07 Airmail
Postmaster, By *WJZ*
From



RACE RELATIONS LAW REPORTER
VANDERBILT UNIVERSITY
NASHVILLE 5, TENNESSEE

March 1, 1957

Mr. R. C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery 1, Alabama

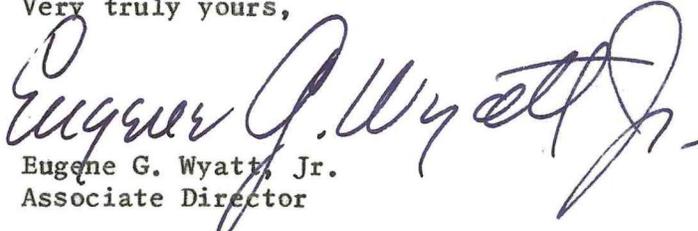
In re: Browder v. Gayle et al., Civ. Action 1147-N.

Dear Mr. Dobson:

We are advised that an opinion was issued in the above styled case yesterday. We would like very much to have a copy. If possible, please send it with statement, or we will remit in advance, as you prefer.

Your continued co-operation will be greatly appreciated.

Very truly yours,



Eugene G. Wyatt, Jr.
Associate Director

EGW/ai

ARMSTRONG McCADDEN ALLEN BRADEN & GOODMAN

WALTER P. ARMSTRONG
1884-1949

J. E. McCADDEN
JAMES SEDDON ALLEN
EMMETT W. BRADEN
BENJAMIN GOODMAN
WALTER P. ARMSTRONG, JR.
HUBERT A. McBRIDE
KATHERINE WATSON
NEWTON P. ALLEN
THOMAS R. PREWITT
RICHARD H. ALLEN
JOHN J. DOGGETT, JR.

ATTORNEYS AT LAW
COMMERCE TITLE BUILDING
MEMPHIS 3, TENNESSEE

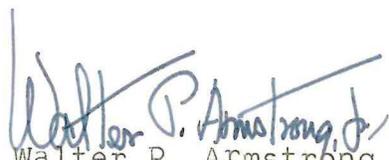
July 6, 1956

R. C. Dobson, Clerk
United States District Court for the
Middle District of Alabama
Montgomery, Alabama

Dear Mr. Dobson:

Enclosed herewith is our check in the amount of \$.75 to cover the cost of the reproduction in connection with the copy of the judgment in the case of Browder, et al v. Gayle, et al, No. 1147, with which you so kindly furnished us a short time ago. I regret the delay in reimbursing you this amount, which is due to the fact that your statement became mislaid in our files.

Very sincerely yours,


Walter P. Armstrong, Jr.

WPA: pbc
Encl.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE COLVIN,
by Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly situated,

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C.C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

ORDER

A "Petition for Instructions" having been presented to the Court by the Board of Commissioners of the City of Montgomery, Alabama, and the individual members thereof, it is now ordered by the Court that the Clerk furnish to each of the counsel of record for the plaintiffs and for the defendants in this cause a copy of such petition, together with the exhibits thereto. The Clerk may carry out this order by mailing such copy by registered mail to each of said attorneys. The Court will withhold action upon such petition for a period of at least three weeks from this date, during which said three weeks any of such counsel may, if they see fit, submit briefs to the Court on the propriety and authority of the Court to respond to said petition for instructions, together with briefs on the merits of such inquiry.

Done this the _____ day of January, 1957.

United States Circuit Judge

UNITED States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE COLVIN,
by Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly situated,

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C.C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

O R D E R

A "Petition for Instructions" having been presented to the Court by the Board of Commissioners of the City of Montgomery, Alabama, and the individual members thereof, it is now ordered by the Court that the Clerk furnish to each of the counsel of record for the plaintiffs and for the defendants in this cause a copy of such petition, together with the exhibits thereto. The Clerk may carry out this order by mailing such copy by registered mail to each of said attorneys. The Court will withhold action upon such petition for a period of at least three weeks from this date, during which said three weeks any of such counsel may, if they see fit, submit briefs to the Court on the propriety and authority of the Court to respond to said petition for instructions, together with briefs on the merits of such inquiry.

Done this the _____ day of January, 1957.

United States Circuit Judge

UNITED States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION.

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE COLVIN,
by Q. P. COLVIN, next friend, and
MARY LOUISE SMITH, by FRANK SMITH,
next friend, and others similarly situated,

Plaintiffs,

vs.

NO. 1147

W. A. GAYLE, CLYDE SELLERS,
and FRANK PARKS, individually and
as members of the Board of Commissioners
of the City of Montgomery, Alabama,
and GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the
City of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C.C. (JACK) OWEN,
JIMMY HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC SERVICE
COMMISSION,

Defendants.

ORDER

A "Petition for Instructions" having been presented to the Court by the Board of Commissioners of the City of Montgomery, Alabama, and the individual members thereof, it is now ordered by the Court that the Clerk furnish to each of the counsel of record for the plaintiffs and for the defendants in this cause a copy of such petition, together with the exhibits thereto. The Clerk may carry out this order by mailing such copy by registered mail to each of said attorneys. The Court will withhold action upon such petition for a period of at least three weeks from this date, during which said three weeks any of such counsel may, if they see fit, submit briefs to the Court on the propriety and authority of the Court to respond to said petition for instructions, together with briefs on the merits of such inquiry.

Done this the _____ day of January, 1957.

United States Circuit Judge

UNITED States District Judge

May 20, 1957

Honorable John Patterson
Attorney General
State of Alabama
Montgomery, Alabama

Re: Aurelia S. Browder, et al
vs. W. A. Gayle
Alabama Public Service
Commission, et al
Civil Action No. 1147-N

Dear Sir:-

We enclose herewith check No. 3081, payable to the State of Alabama, in the amount of \$118.61, which represents a refund of the balance of the cash appeal bond deposited with this Court by the Appellant, the Alabama Public Service Commission, in the amount of \$200.00, after the deduction of one third of the Court costs.

For your information the total court costs amounted to \$244.15. The City of Montgomery has deposited \$81.38, one third of the costs, and the Montgomery City Lines, Inc., has deposited \$81.38, one third of the costs. We have deducted from your cash bond \$81.39, one third of the costs.

Very truly yours,

R. C. Dobson
Clerk, U. S. District Court

By _____
Deputy Clerk

55-25

15.00

70.25 Clerk

119.40 Marshal

189.65

20.00 atty Docket Fee

209.65

34.50

244.15

April 25, 1957

Mr. Fred D. Gray
Attorney at Law
113 Monroe Street
Montgomery, Alabama

Re: Browder, et al vs. Gayle, et al
Civil Action No. 1147-N

We enclose herewith the original and five copies of a bill of costs on which we have listed the costs as shown by the records of this office. If you claim any other costs please enter same on the bill and change the total to agree, certify to same on the certificate thereon and mail one copy to each of the opposing counsel, and send three copies to this office, retaining one copy for your files.

Very truly yours,

R. C. Dobson
Clerk, U. S. District Court

By _____
Deputy Clerk

RACE RELATIONS LAW REPORTER
VANDERBILT UNIVERSITY
NASHVILLE 5, TENNESSEE

February 18, 1957

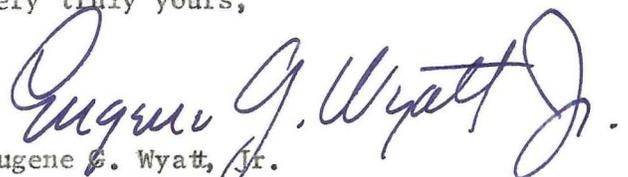
Mr. R. C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery 1, Alabama

Dear Mr. Dobson:

This will acknowledge your letter of February 15, in which you enclosed a copy of various materials in Browder v. Gayle, et al. Civil Action No. 1147-N. As per your statement, we are enclosing herewith a check for \$2.25.

We particularly appreciate this courtesy.

Very truly yours,


Eugene E. Wyatt, Jr.
Associate Director

EGW/ai

enc.

119.40

February 15, 1957

Mr. Eugene G. Wyatt, Jr.,
Associate Director,
Race Relations Law Reporter,
Nashville 5, Tennessee

Dear Sir:-

Re: Browder vs. Gayle, et al
Civil Action No. 1147-N

In compliance with your request of
February 13th, we enclose herewith a copy of the
Petition of the City of Montgomery for Instructions,
and of the order of the Court entered on January 24th.

Please let us have remittance in the amount
of \$2.25, the fee for this copy.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

128

RACE RELATIONS LAW REPORTER
VANDERBILT UNIVERSITY
NASHVILLE 5, TENNESSEE

February 13, 1957

Mr. R. C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery 1, Alabama

Dear Sir:

As you may recall, the Vanderbilt University School of Law has begun publication of a legal reporting service in the field of race relations. This is to be strictly objective. It is our purpose to include all types of legal materials pertaining to the situation.

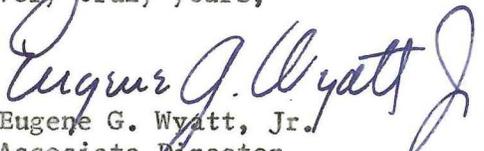
Previously, your office has been particularly helpful in assisting us.

We have seen newspaper accounts of a petition by the city of Montgomery seeking an advisory opinion on the legality of issuing a franchise for operation of a private bus line for whites only. We would like very much to secure a copy of this petition, and if any opinion and order or orders have been issued, we would also like copies of these.

If you could furnish this material, please indicate what charge will be required.

Your continued co-operation will be greatly appreciated.

Very truly yours,


Eugene G. Wyatt, Jr.
Associate Director

EGW jr/ai

enc.

TEMPORARY BULK RECEIPT

Received from US Dist. Court

Registered Articles - - - - 11

Insured Parcels - - - - -

C. O. D. Parcels - - - - -



SENDER:

Present this temporary receipt to-morrow or within a few days, and a permanent receipt describing each individual article by number will be given you.

POSTMASTER,

Form 3824.

By CWZ

5-4480

47 x 11 = 5.17

(Duplicate copy may be retained by post office.)

January 26, 1957

Mr. Fred D. Grey, ✓
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Mr. Charles D. Langford, ✓
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Mr. Robert L. Carter, ✓
Attorney at Law,
107 West 43rd Street,
New York, N. Y.

Dear Sirs:-

Re: Aurelia S. Browder, et al
vs. W. A. Gayle, et al
Civil Action No. 1147-N

Enclosed herewith find a copy of Petition
for Instructions filed in the above listed case on
January 26, 1957, and a copy of the Order of the
Court dated January 26, 1957.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

January 26, 1957

Mr. Walter J. Knabe, ✓
Attorney at Law,
511 Hill Building,
Montgomery, Alabama

Mr. Drayton N. Hamilton, ✓
Attorney at Law,
511 Hill Building,
Montgomery, Alabama

Mr. Herman H. Hamilton, ✓
Attorney at Law,
511 Hill Building,
Montgomery, Alabama

Mr. Robert Thrun, ✓
Attorney at Law,
20 Pine Street,
New York, N. Y.

Dear Sirs:-

Re: Aurelia S. Browder, et al
vs. W. A. Gayle, et al
Civil Action No. 1147-N

Enclosed herewith find a copy of a Petition
for Instructions filed in the above listed case on
January 25, 1957, and a copy of the Order of the
Court dated January 26, 1957.

Very truly yours,

R. C. Dobson
Clerk, U. S. District Court

By

Deputy Clerk

January 26, 1957

Hon. John Patterson, ✓
Attorney General of the State of Alabama,
Montgomery, Alabama

Hon. William N. McQueen, ✓
Assistant Attorney General,
State of Alabama,
Montgomery, Alabama

Hon. Gordon Madison, ✓
Assistant Attorney General,
State of Alabama,
Montgomery, Alabama

Hon. W. P. Black,
Attorney at Law,
State Office Building,
Montgomery, Alabama

Dear Sirs:-

Re: Aurelia S. Browder, et al
vs. W. A. Gayle, et al
Civil Action No. 1147-N

Enclosed herewith find a copy of a Petition
for Instructions filed in the above listed case on
January 25, 1957, and a copy of the order of the
Court dated January 26, 1957.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

Montgomery,

January 16, 1957

Hon. James H. Willis,
City Attorney,
Birmingham, Alabama

Dear Sir:-

Re: Browder, et al vs.
Gayle, et al
Civil Action No. 1147-N

At the request of Mr. Walter Knabe, Attorney,
we are enclosing herewith a certified copy of the record,
including the transcript of testimony, but excluding the
summons and Marshal's returns, in the above styled
cause. Copies of the exhibits are not enclosed.

Please let us have remittance in the sum of
\$42.50, the fee for this copy.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

RD

Office of the Clerk
SUPREME COURT OF THE UNITED STATES
Washington 25, D.C.

File

December 18, 1956.

RE: GAYLE V. BROWDER, NO. 342,
October Term, 1956:
Your Civ. No. 1147-N

Dear Sir

The Court on December 17th entered
the following order in the above-entitled
case:

"The petition for clarification
and rehearing in this case is denied."

Yours truly,

JOHN T. FEY, Clerk,

BY

E. P. Cullinan

E. P. Cullinan,
Assistant.

EPC:tw

Clerk,
U.S. District Court,
Middle District of Alabama,
Montgomery 1, Alabama.

January 4, 1956

Messrs. Douglas, Obear & Campbell,
Attorneys at Law,
Southern Building,
Washington 5, D. C.

Dear Sirs:-

Re: Browder, et al
vs Gayle, et al.
Civil Action No. 1147-N

Receipt of your letter of January 2nd, enclosing
your check in the amount of \$5.75, is acknowledged.

Enclosed herewith find certified copy of the
opinion and judgment of the three Judges and order of the
Supreme Court of the United States affirming the judgment
of this Court.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

LAW OFFICES
DOUGLAS, OBEAR & CAMPBELL
SOUTHERN BUILDING
WASHINGTON 5, D. C.
NATIONAL 8-2155

CHAS. A. DOUGLAS (1862-1939)
HUGH H. OBEAR
EDMUND D. CAMPBELL
J. A. MARSHALL
BENJ. W. DULANY
RONALD E. MADSEN

JOHN C. RISTINE
ASSOCIATE TAX COUNSEL

January 2, 1957

AIRMAIL

Mr. R. C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery, Alabama

Re: Browder, et al. vs. Gayle, et al.
Civil Action No. 1147-N

Dear Sir:

I am acknowledging your letter of December 27th and enclosing our firm check in the amount of \$5.75 for a copy of the opinion and judgment of your Court and copy of the order of the Supreme Court affirming the judgment. It is my understanding that this is the decision of the special three Judge Court appointed to hear this case. If I am in error, it would be greatly appreciated if the opinion of that Court is also sent to me, and I will guarantee any costs therefor. This material is to be used in a hearing on Monday, January 7th, and any effort you may expend to insure its receipt by that date will be greatly appreciated.

Sincerely yours,

Ronald E. Madsen

REM:gr
Enclosure

Montgomery,

December 27, 1956

Messrs. Douglas, Obear & Campbell,
Attorney at Law,
Southern Building,
Washington 5, D. C. Attention Mr. Ronald E. Madsen

Dear Sirs:- Re: Browder, et al vs. Gayle, et al
Civil Action No. 1147-N

Receipt of your letter of December 21st is
acknowledged.

If you wish a copy of the opinion and judgment
of this Court and a copy of the order of the Supreme Court
affirming the judgment of this Court the fee will be \$5.75.
If you wish a copy of the judgment of this Court and the
order of the Supreme Court only the fee will be \$1.00.

Upon receipt of your advice and remittance
we will send you the copies you desire.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk.

AFTER 5 DAYS RETURN TO

CITY OF MERIDIAN

J. W. FORRESTER
CITY CLERK AND TREASURER
MERIDIAN, MISS.

Your Health

PROTECTED BY

Willing Water



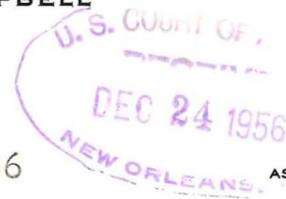
LAW OFFICES
DOUGLAS, OBEAR & CAMPBELL

SOUTHERN BUILDING
WASHINGTON 5, D. C.

NATIONAL 8-2155

CHAS. A. DOUGLAS (1862-1939)
HUGH H. OBEAR
EDMUND D. CAMPBELL
J. A. MARSHALL
BENJ. W. DULANY
RONALD E. MADSEN

December 21, 1956



JOHN C. RISTINE
ASSOCIATE TAX COUNSEL

Clerk
Fifth Circuit Court of Appeals
New Orleans, Louisiana

Dear Sir:

Please send me a copy of the recent decision in the Montgomery County (Alabama) segregation cases with regard to segregation on buses.

Sincerely yours,

Ronald E. Madsen
Per: G. Roberge

REM:gr

254
100
22
115
46
575

Montgomery

December 27, 1956

Mr. Fred D. Gray,
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Dear Sir:-

Re: Browder, et al vs. Gayle, et al
Civil Action No. 1147-N

We enclose herewith blank costs bills,
which please fill out for any costs you may have
incurred that is properly chargeable, certify to
same on the certificate thereon, and mail the original
to the opposing Counsel, send three copies to this
office and retain a copy for your files.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk.

J. B. MELTON
VICE-MAYOR

W. S. SMYLIE
MAYOR

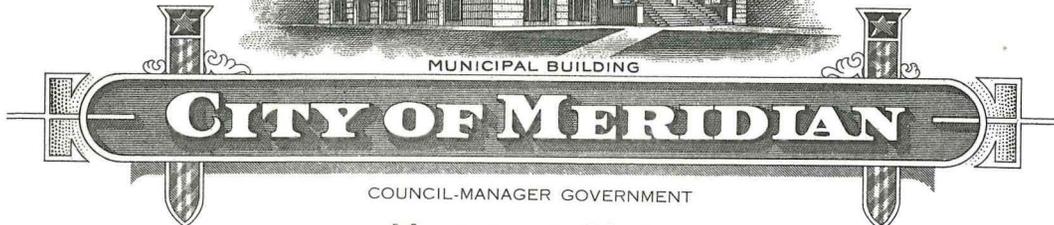
J. W. FORRESTER
CITY CLERK & TREASURER

CITY COUNCIL
M. R. ANDERS
F. A. COOK
R. W. FRASIER, SR.
G. E. GRIFFIN
L. L. McALLISTER

CITY COUNCIL
J. B. MELTON
LEROY REEVES
W. H. SANDERSON
C. D. SHIELDS
W. M. STALLWORTH, SR.



MUNICIPAL BUILDING



COUNCIL-MANAGER GOVERNMENT

MERIDIAN, MISS.

December 21, 1956

OFFICE OF
CITY ATTORNEY

United States District Clerk
Federal Building
Montgomery, Alabama

Re: Browder et al vs. Gayle et al
No. 1147

Dear Sir:

Will you please send us a copy of the original or last amended complaint in the above styled case, together with a bill for this service.

If your office cannot render this service, please refer this letter to some private individual who will do this and if payment in advance is required, please advise the amount necessary.

If the order from the Supreme Court has been received, we would also like to have a copy of it.

Very truly yours,

ETHRIDGE, MINNIECE & BOURDEAUX

By *Thomas Y. Minniece*

TYM:jm

Montgomery

December 27, 1956

Messrs. Ethridge, Minniece & Bourdeaux,
Meridian,
Mississippi

Dear Sirs:-

Re: Browder, et al vs. Gayle, et al
Civil Action No. 1147-N

Receipt of your letter of December 21st
is acknowledged.

copy of
We enclose herewith/the original complaint
and two amendments, and a copy of the order of the
Supreme Court affirming the judgment of this Court.
The fee for these copies is \$4.25. Please let us have
remittance in this amount.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

By

Deputy Clerk

Office of the Clerk
SUPREME COURT OF THE UNITED STATES
Washington 25, D.C.

December 18, 1956.

RE: OWEN V. BROWDER, NO. 343,
October Term, 1956:
Your Civ. No. 1147-N

Dear Sir

The Court on December 17th denied
the petition for rehearing in the above-
entitled case.

Yours truly,

JOHN T. FEY, Clerk

BY

E. P. Cullinan

E. P. Cullinan,
Assistant.

EPC:tw

Clerk,
U.S. District Court,
Middle District of Alabama,
Montgomery 1, Alabama.

OFFICE OF THE CLERK,
Supreme Court of the United States,
Washington 13, D. C.

August 28, 1956

Oliver D. Street, Jr., Esquire
Clerk, U. S. District Court
for the Middle District of Alabama
U. S. Courthouse
Montgomery 1, Alabama

Re: Gayle, et al., etc., vs. Browder, et al.,
Civil No. 1147-N
Owen, et al., etc., vs. Browder, et al.,
Civil No. 1147-N

Dear Mr. Street:

I write to advise you that on August 23rd, the appeals in the cases of Gayle, et al., vs. Browder, et al., and Owen, et al., vs. Browder, et al., were docketed as numbers 342 and 343 respectively, October Term, 1956.

Very truly yours,

JOHN T. FEY, Clerk

By

C. D. Zimmermann

Assistant

CDZ:my

August 27, 1956

To
Honorable John Patterson,
Attorney General,
State of Alabama,
Montgomery, Alabama.

Re: Aurelia Brewer, et al
vs. W. A. Gayle, et al.
Civil Action No. 11,7-N

In account with
H. C. Dobson,
Clerk, U. S. District Court,
Middle District of Alabama,
Montgomery, Alabama

For costs in said Court for preparing
the transcript of record on appeal to
the Supreme Court of the United States
and other costs \$200.00

Clerk, U. S. District Court
Middle District of Alabama

ROBERT C. DOBSON
~~XXXXXXXXXXXX~~

June 26, 1956

Mr. Guyte P. McCord,
Clerk, Supreme Court of Florida,
Tallahassee, Florida

Dear Sir:-

Re: Browder, et al
vs. Gayle, et al
Civil Action No. 1117-N

Your letter addressed to the Circuit Court
of Appeals, New Orleans, Louisiana, has been forward
to this office for reply.

We enclose herewith a photostatic copy of
the opinion in the above listed case. Please let us
have remittance in the sum of \$5.00, the fee for this
copy.

Very truly yours,

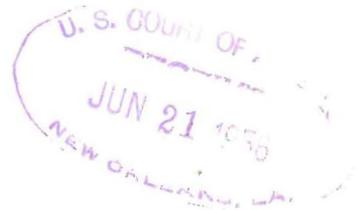
R. C. Dobson,
Clerk, U. S. District Court

Supreme Court of Florida

GUYTE P. McCORD
CLERK
ELLA O'NEILL WILKINS
DEPUTY CLERK

Tallahassee

June 20, 1956



Honorable John A. Feehan, Jr.
Clerk Circuit Court of Appeals
New Orleans, Louisiana

Dear Mr. Feehan:

One of the Justices of this Court has requested that I secure for him a copy of the recent opinion of your Court on some phase of the Montgomery bus boycott. He does not know the parties to the case. I hope the subject matter will enable you to find it for me.

Most cordially,

Handwritten signature of Guyte P. McCord in blue ink.

Clerk Supreme Court.

GPM:dw

June 25, 1956

Mr. Paul H. Sanders,
Director, Race Relations Law Reporter,
Vanderbilt University,
Nashville 5, Tennessee

Dear Sir:-

Re: Browder, et al
vs. Gayle, et al,
Civil Action No. 1147-N

Referring to your request of June 20th,
we enclose herewith a photostatic copy of the
judgment and injunction filed in the above case on
June 19, 1956. Please let us have remittance in the
sum of 75¢, the fee for this copy.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court.

RACE RELATIONS LAW REPORTER
VANDERBILT UNIVERSITY
NASHVILLE 5, TENNESSEE

June 20, 1956

Mr. Robert C. Dobson, Clerk
United States District Court
Middle District of Alabama
Montgomery 1, Alabama

In Re: Browder, et al. v. Gayle, et al.
CA #1147-N

Dear Sir:

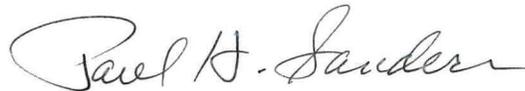
This will acknowledge your letter of June 18, 1956, in which you quote a price for the opinion in the above styled cause.

We notice by news dispatches today, however, that an injunction was issued yesterday to stop enforcement of the Montgomery bus segregation laws. This now becomes of primary interest to us, and we should like to have a copy of it rather than of the opinion.

If it is your policy to do so, please send a copy of the injunction and bill us. Otherwise, please notify us of the cost and we will remit in advance.

Your continued co-operation will be greatly appreciated.

Very truly yours,



Paul H. Sanders, Director

PHS/a

NATIONAL LAWYERS GUILD

40 Exchange Place,
New York 5, N. Y.
HANover 2-5971

Executive Committee
MALCOLM P. SHARP, President
EARL B. DICKERSON
THOMAS I. EMERSON
ROBERT W. KENNY

Executive Vice-President
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SAMUEL D. MENIN
PATRICK J. O'BRIEN
GEORGE OLSHAUSEN
HERMAN WRIGHT

Treasurer
JULIUS COHEN

Sept. 24, 1956

Clerk
U.S. Dist. Ct.
Mid Dist of Ala
Montgomery, Ala

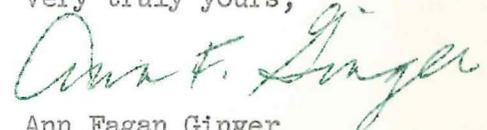
Dear Sir:

Will you please send me at your earliest convenience any developments in the case listed below, since June 10:

Re: Browder v. Gayle

Thank you for your kind cooperation.

Very truly yours,



Ann Fagan Ginger
Legal Assistant

DOCKET ENTRIES:

Aurelia S. Browder, et al

Plaintiffs,

VS

W. A. Gayle, et al,

Defendants.

CIVIL ACTION:
1 1 4 7 - N

1956:

- Feb 1 Compalint filed. Petition for permanant injunctioin for a declaratory judgment, filed.
- Feb 21 Answer of defendants W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Ala., and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Ala.
- Feb 21 Motion to dismiss filed by defendants W. A. Gayle, Clyde Sellers, and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Ala.
- Feb 23 Answer of defendant, Montgomery City Lines, Inc., filed.
- Feb 23 Answer of defendants, James F. Blake and Robert Cleere, filed.
- Feb 23 Stipulation of counsel that the time of filing defensive pleadings of defendants Montgomery City Lines, Inc., Robert Cleere and James F. Blake be extended to Friday, Feb 24, 1956, filed.
- Mar 8 Amendment to complaint striking the name of Jeanneatta Reese as a party plaintiff and adding as parties defendant the names of C. C. (Jack) Owen, Jimmy Hitchcock and Sybil Pool, as members of the Alabama Public Service Commission, filed.
- Mar 15 Order of Judge Joseph C. Hutcheson, Jr., designating Judge Richard T. Rives and Judge Seybourn H. Lynne, to serve with Judge Frank M. Johnson, Jr., to constitute a three judge court to hear and determine action, filed.
- Mar 26 Motion to dismiss filed by C. C. (Jack) Owen, Jimmy Hitchcock, and Sybil Pool, as members of the Alabama Public Service Commission.
- Mar 27 Answer of Montgomery City Lines, filed.
- Mar 27 Answer of defendant James F. Blake and Robert Cleere to complaint, filed.
- Mar 27 Motion of defendants W. A. Gayle, Clyde Sellers, and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Ala., and Goodwyn J. Ruppenthal, individually and as Chief of Police of City of Montgomery, Ala., to dismiss, filed.

Mar 27 Motion to strike their names as individuals from the petition filed by W. A. Gayle, Clyde Sellers, Frank Parks, and Goodwyn J. Ruppenthal.

Mar 27 Answer of the defendants W. A. Gayle, Clyde Sellers, and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Ala., and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Ala.

Apr 9 Notice of hearing at 9 AM, May 11, 1956, mailed.

Apr 19 Answer of C. C. (Jack) Owen, Jimmy Hitchcock, and Sybil Pool, as members of the Alabama Public Service Commission.

May 4 Amendment to motion to strike filed by W. A. Gayle, Clyde Sellers, Frank Parks and Goodwyn J. Ruppenthal.

May 11 Motion of the Montgomery City Lines, Inc., for leave to file amended answer, filed.

May 23 Plaintiffs' amendment to amended complaint, filed.

June 5 Opinion of Judge Johnson and Judge Rives; Judge Lynne, dissenting, filed.

ROBERT C. DOBSON
~~XXXXXXXXXXXX~~

June 29, 1956

Honorable Robert Thrun,
Attorney at Law,
20 Pine Street,
New York, New York

Dear Sir:-

Re: Browder, et al.
vs. Gayle, et al.
Civil Action No. 1147-N

We enclose herewith copy of Notice of Appeal to the Supreme Court of the United States, filed by W. A. Gayle, Glyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, Defendants, and copy of application for Stay filed by said defendants.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court.

ROBERT C. DOBSON
XXXXXXXXXXXX

June 29, 1956

Honorable John Patterson,
Attorney General,
State of Alabama,
Montgomery, Alabama

Dear Sir:-

Re: Browder, et al.
vs. Gayle, et al.
Civil Action No. 1147-N

We enclose herewith copy of Notice of Appeal to the Supreme Court of the United States, filed by W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, Defendants, and copy of Application for Stay filed by said defendants.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

ROBERT G. DOBSON
~~XXXXXXXXXXXXXXXXXXXX~~

June 29, 1956

Mr. Fred D. Gray,
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Mr. Charles D. Langford,
Attorney at Law,
111 Monroe Street,
Montgomery, Alabama

Mr. Robert L. Carter,
Attorney at Law,
107 West 42nd Street,
New York, New York

Dear Sirs:-

Re: Browder, et al.
vs. Gayle, et al.
Civil Action No. 1347-N

Enclosed herewith find copy of Notice of Appeal to the Supreme Court of the United States, filed by Defendants, W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama.

Very truly yours,

R. G. Dobson,
Clerk, U. S. District Court

June 29, 1956

ROBERT C. DOBSON
XXXXXXXXXXXX

June 23, 1956

Honorable John Patterson,
Attorney General,
State of Alabama,
Montgomery, Alabama

Dear Sir:-

Re: Browder, et al.,
vs. Gayle, et al.
Civil Action No. 1147-N

Enclosed herewith please find a copy of
the order suspending during the pendency of the appeal
the injunction granted in this cause.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

ROBERT C. DOBSON
XXXXXXXXXXXXXX

June 28, 1956

Hon. Walter J. Knabe,
Attorney at Law,
Hill Building,
Montgomery, Alabama

Dear Sir:-

Re: Browder, et al.,
vs. Gayle, et al.
Civil Action No. 1147-N

Enclosed herewith please find copy of notice of appeal to the Supreme Court of the United States filed by C. C. (Jack Owen), Jimmy Hitchcock and Sibyl Pool, as Members of the Alabama Public Service Commission, and a copy of the order suspending during the pendency of the appeal the injunction granted in said cause.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

ROBERT C. DOBSON
XXXXXXXXXXXX

June 28, 1956

Hon. Robert Thrun,
Attorney at Law,
20 Pine Street,
New York, N. Y.

Dear Sir:-

Re: Browder, et al.,
vs. Gayle, et al.
Civil Action No. 1147-N

Enclosed herewith please find copy of notice of appeal to the Supreme Court of the United States filed by defendants, C. G. (Jack) Owen, Jimmy Hitchcock and Sibyl Pool, as members of the Alabama Public Service Commission, and a copy of the order suspending during the pendency of the appeal the injunction granted in said cause.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court.

ROBERT C. DOBSON
██████████████████

June 28, 1956

Mr. Fred D. Gray,
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Mr. Charles D. Langford,
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Mr. Robert L. Carter,
Attorney at Law,
107 West 43rd Street,
New York, New York

Dear Sirs:-

Re: Browder, et al.,
Vs. Gayle, et al.
Civil Action No. 1147-N

We enclose herewith copy of notice of appeal to the Supreme Court of the United States filed by defendants, C. G. (Jack) Owen, Jimmy Hitchcock and Sibyl Pool, as members of the Alabama Public Service Commission, and a copy of the order suspending during the pendency of the appeal the injunction granted in said cause.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court

June 20, 1956

Mr. Robert L. Carter,
Attorney at Law,
107 West 43rd St.,
New York, New York

Dear Sir:-

Re: Browder, et al
vs. Gayle, et al.
Civil Action No. 1147-N

Enclosed herewith find copy of the judgment
entered in the above cause on June 19, 1956.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court.

6-5-56.

Received at this date one copy of
decisions in U.S. District Court case no
11.47.

A. J. Travelle.

Chief Inspector.

A. P. S. C.

State Office Bldg.

Monty. Ala.

June 5, 1956

Mr. Robert L. Carter,
Attorney at Law,
107 West 43rd Street,
New York, New York

Dear Sir:

Re: Aurelia S. Browder, et al.
vs. W. A. Gayle, et al
Civil Action No. 1147-N

Enclosed herewith please find copy of the
opinion filed on June 5, 1956, in the case of Aurelia
S. Browder, et al., vs. W. A. Gayle, et al.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court,

By _____
Deputy Clerk.

June 5, 1956

Mr. Charles D. Langford,
Attorney at Law,
113 Monroe Street,
Montgomery, Alabama

Dear Sir:-

Re: Aurelia S. Browder, et al.
vs. W. A. Gayle, et al.
Civil Action No. 1147-N

Enclosed herewith please find copy of the
opinion filed on June 5, 1956, in the case of Aurelia
S. Browder, et al., vs. W. A. Gayle, et al.

Very truly yours,

R. C. Dobson,
Clerk, U. S. District Court,

By _____
Deputy Clerk.

"A subpoena may be served by the marshal, by his deputy or by any other person who is not less than 21 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure)

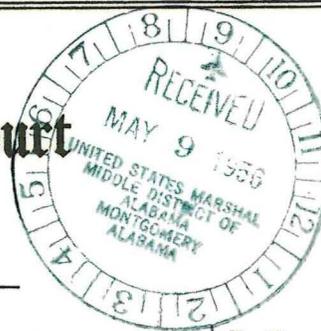
Civil

45c

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

To Mr. W. A. Gayle, Mayor,
City Hall,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg. on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford,
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk.
By *Annis Schooley*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 10, 1956 at City Hall, Montgomery, Ala. I served it on the within named W. A. Gayle by delivering a copy to him and tendering to him the fee for one day's attendance, and the mileage allowed by law. 9:10 am (adv \$4.00).

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal

By *James W. Busby*

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

RETURNED AND FILED

MAY 1 1956

this

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of _____, 19____

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A sub **CIVIL SUBPOENA**

D. C. Form No. 1 (Rev. 1-51)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. **1147-N**

Aurelia S. Browder, et al
vs.
W. A. Gayle, et al

To Mr. Clyde Sellers, Commissioner,
City Hall,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
Middle District of Alabama
at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama,
on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on
behalf of the Plaintiffs
in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By Annie Schoolars
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956
and on May 9, 1956 at City Hall, Montgomery, Ala. I
served it on the within named Clyde Sellers
by delivering a copy to him and tendering to him the fee for one day's attendance and the mile-
age allowed by law. 1:40 pm (adv \$4.00).

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal

By Jamie W. Burns

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

RETURNED AND FILED

MAY 11 1956 this

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.



United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION FILE NO. 1147-N

"A subpoena may be served by the marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. If a subpoena is served by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of ~~Criminal~~ Procedure ~~170~~)

Civil

4 Aurelia S. Browder, et al.

vs.

W. A. Gayle, et al

To Mr. Frank Parks, Commissioner,
City Hall,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama, on the 11th day of May, 1956, at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in the above entitled action.

May 8, 1956

Attorney Charles D. Langford
Attorney for the Plaintiff
Montgomery, Alabama
Address

O. D. Street, Jr.,
Clerk.
By *Annie Schollar*
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 9, 1956 at City Hall, Montgomery, Alabama I served it on the within named Frank Parks by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law 4.25 (adv \$4.00)

Dated May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal
By *James W. Hurry*

Service Fees	
Travel\$
Services	..... .50
Total	.....\$ .50

MAY 10 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 _____.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, person who is not less than 18 years of age, service of a subpoena. It is to be delivered to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 45a)

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE No. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Montgomery City Lines, Inc.,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the

Middle District of Alabama
at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama on
the 11th day of May 19 56 at 9:00 o'clock A. M. to
testify on behalf of the Plaintiffs

in the above entitled action and bring with you All records, letters, minutes, etc. compiled during the last five years, between the Montgomery City Lines, Inc., and the City of Montgomery dealing with the enforcement of City (Montgomery) and State (Alabama) segregation laws on City buses; also all records and complaints filed in which Negro passengers were arrested by bus drivers and/ or police officers of the City of Montgomery, Alabama during the last five years.

May 8, 19 56.

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By Annie Schooler
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956
and on May 9, 1956 at 701 No. McDonough St., Montgomery, Ala.
served it on the within named Montgomery City Lines
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law. Reynolds C. Mills, Assistant Manager 2:05 pm

Dated: May 9, 19 56

CHARLES S. PRESCOTT, U. S. Marshal
By [Signature]
MAY 10 1956

Service Fees
Travel \$
Services .50
Total \$.50

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19 .

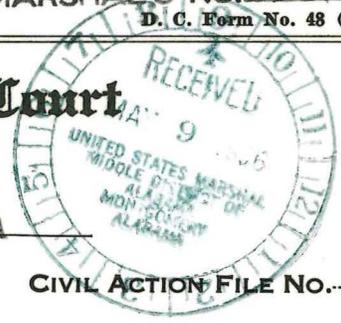
this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1147-N

marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 174)

Cr 117 450 vs. W. A. Gayle, et al

No.

To Mr. Goodwyn J. Ruppenthal,
Chief of Police, of the City of Montgomery, Alabama,
City Hall,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the

Middle District of Alabama
at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama on
the 11th day of May 19 56 at 9:00 o'clock A. M. to
testify on behalf of the Plaintiffs,

in the above entitled action and bring with you all records, letters, minutes, etc, compiled during the last five years between the Police Department of the City of Montgomery, Alabama, Montgomery City Lines, Inc., and the City of Montgomery, Alabama, dealing with the enforcement of City (Montgomery) and State (Alabama) segregation laws on City buses; also all records and complaints filed in which Negro passengers were arrested by bus drivers and / or police officers of the City of Montgomery, Alabama during the last five years.

May 8, 19 56.

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr. Clerk.
By Cornie Schoolar Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956
and on May 9, 1956 at Police Hdqs, Montgomery, Alabama
served it on the within named Goodwyn J. Ruppenthal
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 4:30 pm (adv \$4.00)

Dated: May 10, 19 56

CHARLES S. PRESCOTT, U. S. Marshal
By James W. Burns

Service Fees
Travel \$
Services .50
Total \$.50

MAY 16 1956

O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a
day of , 19 .

this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, by his deputy or by any other person who is authorized by law to serve process."

MID-ALABAMA MARSHAL'S NO. C-118

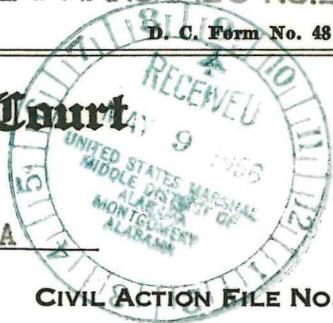
D. C. Form No. 48 (Rev. 7-51)

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE No. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Mr. C. C. "Jack" Owen,
President of the Alabama Public Service Commission,
State Office Building,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the

at 2nd Floor, Post Office Bldg. Middle District of Alabama in the city of Montgomery, Alabama on the 11th day of May 19 56 at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs

in the above entitled action and bring with you copies of all letters, telegrams and messages directed to the National City Lines, Inc. and all other carriers operating in Alabama directing them to strictly adhere to all present existing segregation laws in the State of Alabama or suffer the consequences.

May 8, 19 56

Attorney Charles D. Langford
Attorney for the Plaintiffs
Montgomery, Alabama
Address

O. D. Street, Jr.
Clerk.
By Annie Schoolar
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956
and on May 9, 1956 at AlaPubSerComOffice, StateOfficeBldg, Montgomery, Ala
served it on the within named C. C. "Jack" Owen
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law: 2:30 pm (adv. \$4.00)

Dated: May 10, 19 56

CHARLES S. PRESCOTT, U.S. Marshal,
By James W. Bussard

Service Fees
Travel\$
Services50
Total\$.50

MAY 10 1956
O. D. STREET, JR.
CLERK

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 _____

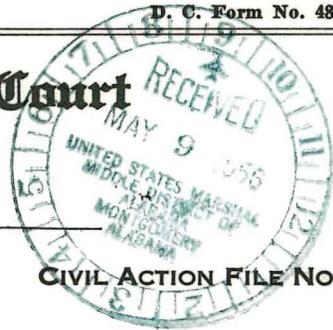
NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE No. 1117-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Mr. Jimmie Hitchcock, Member of the Alabama Public Service Commission, State Office Building, Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the

Middle District of Alabama at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama on the 11th day of May 19 56 at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs

in the above entitled action and bring with you copies of all letters, telegrams, and messages directed to the National City Lines, Inc. and all other carriers operating in Alabama directing them to strictly adhere to all present existing segregation laws in the State of Alabama or suffer the consequences.

May 8, 19 56

Attorney Charles D. Langford Attorney for the Plaintiffs Montgomery, Alabama Address

O. D. Street, Jr. Clerk. By Jimmie Schoolcraft Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956 and on May 9, 1956 at AlaPubSerComm, State Office Bldg, Montgomery, Ala. served it on the within named Jimmie Hitchcock by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. (2:45 pm) (adv. \$4.00).

Dated: May 10, 19 56

CHARLES S. PRESCOTT, U.S. Marshal By James W. [Signature]

Service Fees Travel \$ Services .50 Total \$.50

MAY 13 1956

O. D. STREET, JR. CLERK

Subscribed and sworn to before me, a this day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, by his deputy or by any other person who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 45c)

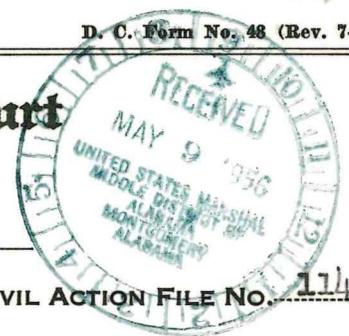
CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

D. C. Form No. 48 (Rev. 7-51)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Mrs. Sybil Pool, Member of the Alabama Public Service Commission, State Office Building, Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama on the 11th day of May 1956 at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs

in the above entitled action and bring with you copies of all letters, telegrams, and messages directed to the National City Lines, Inc. and all other carriers operating in Alabama directing them to strictly adhere to all present existing segregation laws in the State of Alabama or suffer the consequences.

May 8, 1956

Attorney Charles D. Langford, Attorney for the Plaintiffs, Montgomery, Alabama Address

O. D. Street, Jr., Clerk, By Annie Schoolars, Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956 and on May 9, 1956 at AlaPubSerCom Office, StateOfficeBldg, Montgomery, Ala. served it on the within named Sybil Pool by delivering a copy to her and tendering to her the fee for one day's attendance and the mileage allowed by law. (2:55 pm) (adv. \$4.00)

Dated: May 10, 1956

CHARLES S. PRESCOTT, U.S. Marshal, By James W. Burns

Service Fees: Travel \$, Services .50, Total \$.50

MAY 16 1956 O. D. STREET, JR. CLERK

Subscribed and sworn to before me, a day of , 19

this

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

"A subpoena may be served by the marshal, by any deputy marshal or any other person who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedure 17d) 45c

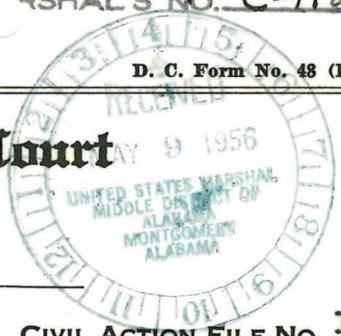
CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

D. C. Form No. 48 (Rev. 7-51)

United States District Court

FOR THE

MIDDLE DISTRICT OF ALABAMA



CIVIL ACTION FILE NO. 1147-N

Civil

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Mr. Robert R. Matthews,
Clerk of the Circuit Court of Montgomery County,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Middle District of Alabama at 2nd Floore, Post Office Bldg. in the city of Montgomery, Alabama on the 11th day of May 19 56 at 9:00 o'clock A. M. to testify on behalf of the Plaintiffs

in the above entitled action and bring with you All records, papers, etc. used in a case tried in said Circuit Court, and captioned City of Montgomery, Appellee vs. Rosa Parks, Appellant, Case No. 4559.

May 9, 1956
Attorney Fred D. Gray
Attorney for the Plaintiff
Montgomery, Alabama
Address

O. D. Street, Jr., Clerk.
By Annie Schoola, Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Ala. on May 9, 1956
and on May 10, 1956 at Montg Co.Ct.House, Montgomery, Ala.
served it on the within named Robert R. Matthews
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law. 1:30 pm (adv \$4.00)

Dated: May 11, 1956

CHARLES S. PRESCOTT, U.S. Marshal,
By J. M. W. Berry

Service Fees
Travel\$
Services50
Total\$.50

RETURNED AND FILED
MAY 16 1956

Subscribed and sworn to before me, a
day of , 19 .

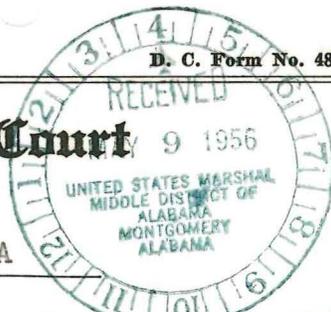
O. D. STREET, JR.
this CLERK

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

D. C. Form No. 48 (Rev. 7-51)

United States District Court



FOR THE

MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION FILE NO. 1147-N

Aurelia S. Browder, et al

vs.

W. A. Gayle, et al

No.

To Mr. George H. Jones,
Register, Circuit Court of Montgomery County, Alabama In Equity,
Montgomery, Alabama

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
Middle District of Alabama

at 2nd Floor, Post Office Bldg. in the city of Montgomery, Alabama on
the 11th day of May 1956 at 9:00 o'clock A. M. to
testify on behalf of the Plaintiffs,

in the above entitled action and bring with you (1) All papers, records, etc. in a
case which was tried in said Court, under the caption City of Montgomery
vs. Claudette Colvin, Case No. 28785, and (2) All papers, records, etc.
in a case which is now pending in said Court under the caption of
City of Montgomery, a municipal corporation vs. Montgomery City Lines,
Inc., Corporation Respondent.

May 9, 1956

Attorney Fred D. Gray
Attorney for the Plaintiff
Montgomery, Alabama
Address

O. D. Street, Jr.

By Annie Echols
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Montgomery, Alabama on May 9, 1956
and on May 10, 1956 at Montg County CT. House, Montgomery, Ala.
served it on the within named George H. Jones
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage
allowed by law. 3:25 pm (adv \$4.00).

Dated: May 11, 1956

CHARLES S. PRESCOTT, U.S. Marshal,

By James W. Busby

Service Fees
Travel \$
Services .50
Total \$.50

RETURNED AND FILED

MAY 16 1956

Subscribed and sworn to before me, a
day of , 19 .

this
O. D. STREET, JR.
CLERK

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

TELEPHONES:
OFFICE 3-9360
RESIDENCE 2-0625

113 MONROE STREET
MONTGOMERY, ALABAMA

LAW OFFICES
FRED D. GRAY
May 9, 1956

Mr. Oliver D. Street, Jr., Clerk
United States District Court
Middle District of Alabama
Montgomery, Alabama

Re: Aurelia S. Browder, et al
vs. W. A. Gayle, et al
Civil Action No. 1147-N

Dear Sir:

Please summon the persons named below to testify in behalf of the Plaintiff in the above styled cause, which is set for trial on to-wit: the 11th day of May, 1956.

Please issue subpoena duces tecum to Mr. Robert R. Matthews, Clerk of the Circuit Court of Montgomery County, requiring him to produce at the time and place stated above, to be used as evidence all records, papers, etc. used in a case tried in said Circuit Court, and captioned City of Montgomery, Appellee vs. Rosa Parks, Appellant, Case No. 4559.

Also issue subpoena duces tecum to Mr. George H. Jones, Register Circuit Court of Montgomery County, Alabama in Equity, requiring him to produce at said time and place to be used as evidence the following: (1) All papers, records, etc. in a case which was tried in said Court, under the caption City of Montgomery vs. Claudette Colvin, Case No. 28785, and (2) All papers, records, etc. in a case which is now pending in said Court under the caption of City of Montgomery, a municipal corporation vs. Montgomery City Lines, Inc., Corporation Respondent.

Yours very truly,


Fred D. Gray

FDG/bh

Sumner 5-9-56

Mr. Oliver D. Street, Jr., Clerk
United States District Court
Middle District of Alabama
Montgomery, Alabama

1147-N

Aurelia S. Browder, et al vs.
W. A. Gayle, et al
Civil Action No. 1147-N

Dear Sir:

Please summon the following witnesses to testify in behalf of the Plaintiff, in the above styled case, which is set for trial on to-wit: the 11th day of May, 1956

NAME	ADDRESS
✓ Mr. W. A. Gayle, Mayor	City Hall, Montgomery, Alabama
✓ Mr. Clyde Sellers, Commissioner	" " " "
✓ Mr. Frank Parks, "	" " " "
✓ Mr. Goodwyn Ruppenthal, Chief of Police	" " " "
✓ Mr. James F. Blake	701 N. McDonough St, Montgomery, Alabama
✓ Mr. Robert Cleere	" " " "
✓ Mr. J. H. Bagley	" " " "
✓ Mr. Reynolds C. Mills	" " " "
✓ Mr. C. C. "Jack" Owens	State Office Building, " "
✓ Mr. Jimmie Hitchcock	" " " "
✓ Mrs. Sibyl Pool	" " " "
✓ Atty. Jack Crenshaw	1st National Bank Building, "
✓ Judge Eugene D. Loe	32 South Perry Street, " "
✓ Mr. William Thetford,	Montgomery County Court House, Montgomery, Ala.
✓ Mr. Lewis W. Hollowell	" " " " " "

Also issue subpoena duces tecum to the Montgomery City Lines, Inc., requiring it to produce at said time and place, to be used as evidence all records, letters, minutes, etc. compiled during the last five years, between the Montgomery City Lines, Inc., and the City of Montgomery dealing with the enforcement of City(Montgomery) and State(Alabama) segregation laws on City buses; also all records and complaints filed in which Negro passengers were arrested by bus drivers and/ or police officers of the City of Montgomery, Alabama during the last five years.

Also issue subpoena duces tecum to Mr. Goodwyn J. Ruppenthal, Chief of Police of the City of Montgomery, Alabama, requiring him to produce at said time and place, to be used as evidence, all records, letters, minutes, etc, compiled during the last five years between the police Department of the City of Montgomery, Alabama, Montgomery City Lines, Inc., and the City of Montgomery, Alabama, dealing with the en-

*Examined 5-8-56
Delivered to Marshal
5-9-56.*

forcement of City(Montgomery) and State(Alabama) segregation laws on City buses; also all records and complaints filed in which Negro passengers were arrested by bus drivers and / or police officers of the City of Montgomery, Alabama during the last five years.

Also issue subpoena duces tecum to Mr. C. C. "Jack" Owen, President of the Alabama Public Service Commission, Mr. Jimmie Hitchcock and Mrs. Sibyl Pool, members of said Alabama Public Service Commission, requiring them to produce at said time and place, to be used as evidence, copies of all letters, telegrams, and messages directed to the National City Lines, Inc. and all other carriers operating in Alabama directing them to strictly adhere to all present existing segregation laws in the State of Alabama or suffer the consequences.

Yours very truly,

Charles D. Langford

Charles D. Langford



STATE OF ALABAMA

EXECUTIVE OFFICE

MONTGOMERY

FRANK M. LONG
LEGAL ADVISER

April 23, 1956

Mr. Oliver D. Street, Jr., Clerk
United States District Court
Montgomery 1, Alabama

Dear Mr. Street:

Re: Civil Action No. 1147-N

Governor Folsom asked me to acknowledge receipt of your letter of April 9th enclosing petition in the above styled cause.

Sincerely yours

Frank M. Long

FRANK M. LONG
Legal Adviser

FML:S

Acting

ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

Department of Justice
Washington

APR 18 1956

Mr. O. D. Street, Jr.
Clerk, U. S. District Court
Middle District of Alabama
Montgomery 1, Alabama

Re: Aurelia S. Browder, et al. v.
W. A. Gayle, et al., D.C. M.D. Ala.
Civil Action No. 1147-N

Dear Mr. Street:

This will acknowledge receipt of your letter of April 9, 1956 to the Attorney General concerning the above captioned suit and receipt of the copy of the record transmitted therewith.

Very truly yours,


GEO. S. LEONARD

Acting Assistant Attorney General

APR 18 1956

Mr. O. D. Street, Jr.
Clerk, U. S. District Court
Middle District of Alabama
Montgomery 1, Alabama

Re: Aurelia S. Browder, et al. v.
W. A. Gayle, et al., D.C. M.D. Ala.
Civil Action No. 1147-N

Dear Mr. Street:

This will acknowledge receipt of your letter of April 9, 1956 to the Attorney General concerning the above captioned suit and receipt of the copy of the record transmitted therewith.

Very truly yours,

GEO. S. LEONARD
Acting Assistant Attorney General

April 12, 1956

Honorable Hartwell Davis,
United States Attorney,
Montgomery, Alabama

Dear Sir:-

Civil Action No. 1147-N

Re: Aurelia S. Browder, and
Susie McDonald and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated, Plaintiffs,

vs.

W. A. Gayle, Clyde Sellers and
Frank Parks, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individual-
ly and as Chief of Police of the City
of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a corporation, and James F. Blake,
and Robert Cleere, and
C. C. (Jack) Owen, Jimmie Hitchcock
and Sybil Pool as members of the
Alabama Public Service Commission,
Defendants.

In compliance with Title 28, Section 2284 of the
United States Code, I am enclosing a certified copy of the
complete file as of record in this court relative to the
above entitled case.

You are herewith advised that this case has been
set for hearing at 9:00 o'clock A. M., on May 11, 1956, in
the United States District Court Room, on the second floor
of the New Post Office Building, Montgomery, Alabama.

It is respectfully requested that a written acknowledgment of the receipt of this letter together with its indicated enclosure be sent to me as early as possible.

With highes regards, I remain,

Very truly yours,

O. D. Street, Jr.,
Clerk, U. S. District Court.

*4/12/56 Receipt of this letter
& enclosure is acknowledged.
Hartwe O Davis
United States Atty.*

United States Department of Justice

UNITED STATES ATTORNEY

MIDDLE DISTRICT OF ALABAMA
MONTGOMERY, ALA.

April 12, 1956

IN REPLY REFER TO
STYLE OF CASE AND

RMD:HVS

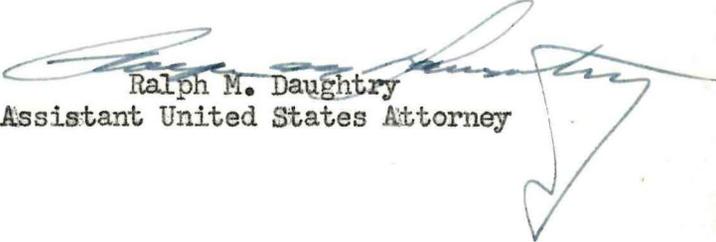
Mr. O. D. Street, Jr.
Clerk, U. S. District Court
Montgomery, Alabama

Re: Aurelia S. Browder, et als, vs.
W. A. Gayle, et als.

Dear Sir:

This acknowledges receipt of your letter dated April 12, 1956,
relative to the above styled case, together with the certified copy
of the complete file.

Yours very truly,
FOR THE UNITED STATES ATTORNEY
Hartwell Davis


Ralph M. Daughtry
Assistant United States Attorney

RMD:HVS

April 12, 1956

Mr. O. D. Street, Jr.
Clerk, U. S. District Court
Montgomery, Alabama

Re: Aurelia S. Browder, et als, vs.
W. A. Gaylo, et als.

Dear Sir:

This acknowledges receipt of your letter dated April 12, 1956,
relative to the above styled case, together with the certified copy
of the complete file.

Yours very truly,
FOR THE UNITED STATES ATTORNEY
Hartwell Davis

Ralph M. Daughtry
Assistant United States Attorney



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
MONTGOMERY 4, ALABAMA

April 10, 1956.

JOHN PATTERSON
ATTORNEY GENERAL

JOSEPH G. ROBERTSON
EXECUTIVE ASSISTANT

ASSISTANT ATTORNEYS
GENERAL

MacDonald Gallion
Senior Assistant

James Noel Baker
Robert P. Bradley
Owen Bridges
Paul T. Gish, Jr.
Mary A. Lee
Gordon Madison
William N. McQueen
James L. Screws
Robert Straub
Bernard F. Sykes

LEGAL RESEARCH AIDES

Robert G. Kilgore, Jr.
Joseph A. Malone
Edmon L. Rinehart

Hon. O. D. Street, Jr.,
Clerk, U. S. District Court,
Montgomery 1, Alabama.

Dear Sir:

Re: Civil Action No. 1147-N -
Aurelia S. Browder, et als vs.
W. A. Gayle, et als.

This will acknowledge receipt of your letter of April 9, 1956, advising that the above case has been set for hearing at 9:00 o'clock, A. M., on May 11, 1956, in the United States District Court Room, on the second floor of the new Post Office Building, Montgomery, Alabama.

This will also acknowledge receipt of the certified copy of the complete file as of record in your court relative to the above entitled case.

With best personal regards.

Yours very truly,

JOHN PATTERSON,
Attorney General
By-

GORDON MADISON,
Assistant Attorney General.

GM:ep

-2-

It is respectfully requested that a written acknowledgment of the receipt of this letter together with its indicated enclosure be sent to me as early as possible.

With highest regards, I remain,

Very truly yours,

O. D. Street, Jr.,
Clerk, U. S. District Court.

April 9, 1956

Honorable John M. Patterson,
Attorney General,
State of Alabama,
Montgomery, Alabama

Dear Sir:-

Civil Action No. 1147-N
Re: Aurelia S. Browder, and
Susie McDonald and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated, Plaintiffs,

vs.

W. A. Gayle, Clyde Sellers and
Frank Parks, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individual-
ly and as Chief of Police of the City
of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a Corporation, and James F. Blake,
and Robert Cleere, and
C. C. (Jack) Owen, Jimmie Hitchcock
and Sybil Pool as members of the
Alabama Public Service Commission,
Defendants.

In compliance with Title 28, Section 2284 of the
United States Code, I am enclosing a certified copy of the
complete file as of record in this court relative to the
above entitled case.

You are herewith advised that this case has been
set for hearing at 9:00 o'clock A. M., on May 11, 1956, in
the United States District Court Room, on the second floor
of the new Post Office Building, Montgomery, Alabama.

April 9, 1956

Honorable Herbert Brownell, Jr.,
Attorney General,
Washington, D. C.

Dear Sir:-

Civil Action No. 1147-N
Re: Aurelia S. Browder, and
Susie McDonald and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and others similarly
situated, Plaintiffs,
vs.
W. A. Gayle, Clyde Sellers and
Frank Parks, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individual-
ly and as Chief of Police of the City
of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a corporation, and James F. Blake,
and Robert Cleere, and
C. C. (Jack) Owen, Jimmie Hitchcock
and Sybil Pool as members of the
Alabama Public Service Commission,
Defendants.

In compliance with Title 28, Section 2284 of the
United States Code, I am enclosing a certified copy of the
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the United States District Court Room, on the second floor
of the new Post Office Building, Montgomery, Alabama.

It is respectfully requested that a written acknowledgment of the receipt of this letter together with its indicated enclosure be sent to me as early as possible.

With highest regards, I remain,

Very truly yours,

O. D. Street, Jr.,
Clerk, U. S. District Court.

April 9, 1956

Honorable James E. Folsom,
Governor,
State of Alabama,
Montgomery, Alabama

Dear Sir:-

Re: Aurelia S. Browder, and
Susie McDonald, and Claudette Colvin,
by Q. P. Colvin, next friend, and
Mary Louise Smith, by Frank Smith,
next friend, and other similarly
situated, Plaintiffs,

vs.

W. A. Gayle, Clyde Sellers and
Frank Parks, individually and as
members of the Board of Commissioners
of the City of Montgomery, Alabama,
and Goodwyn J. Ruppenthal, individual-
ly and as Chief of Police of the City
of Montgomery, Alabama, and
The Montgomery City Lines, Inc.,
a Corporation, and James F. Blake and
Robert Cleere, and
C. C. (Jack) Owen, Jimmie Hitchcock
and Sybil Pool as members of the
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Defendants.

Civil Action No. 1147-N

In compliance with Title 28, Section 2284 of the
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the United States District Court Room, on the second floor
of the new Post Office Building, Montgomery, Alabama.

It is respectfully requested that a written acknowledgment of the receipt of this letter together with its indicated enclosure be sent to me as early as possible.

With highest regards, I remain,

Very truly yours,

O. D. Street, Jr.,
Clerk, U. S. District Court

REGISTERED NO. 16751

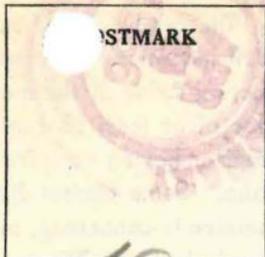
Value \$ 2.40 Spec. del'y fee \$ _____

Fee \$ 40 Ret. receipt fee \$ 7

Surcharge \$ _____ Rest. del'y fee \$ _____

Postage \$ 0.17 Airmail

Postmaster, By [Signature]



From _____

To _____

POD Form 3806
May 1954

c9-16-70493-1

REGISTERED NO. 16752

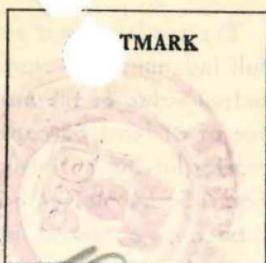
Value \$ 2.40 Spec. del'y fee \$ _____

Fee \$ 40 Ret. receipt fee \$ 7

Surcharge \$ _____ Rest. del'y fee \$ _____

Postage \$ 0.17 Airmail

Postmaster, By [Signature]



From _____

To _____

POD Form 3806
May 1954

c9-16-70493-1

REGISTERED NO. 16753

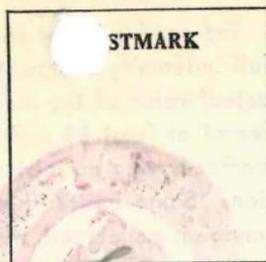
Value \$ 2.40 Spec. del'y fee \$ _____

Fee \$ 40 Ret. receipt fee \$ 7

Surcharge \$ _____ Rest. del'y fee \$ _____

Postage \$ 0.17 Airmail

Postmaster, By [Signature]



From _____

To _____

POD Form 3806
May 1954

c9-16-70493-1

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300.
(GPO)



POSTMARK OF DELIVERING OFFICE
50TH ANNIVERSARY
FOOD AND DRUGS ACT
— 1906 — — — — 1956 —

Return to *Clerk U. & District of*
(NAME OF SENDER)

Street and Number, }
or Post Office Box, }

REGISTERED ARTICLE

No. 16751

INSURED PARCEL

No. _____

MONTGOMERY,

ALABAMA.

Box 35

DELIVERING
EMPLOYEE

- Deliver ONLY to addressee
 Show address where delivered

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this return receipt.

1 Howie Herbert Burdell (S)
(Signature or name of addressee)

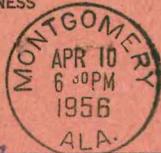
2 [Signature]
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 4-11-56, 1956

Form 3811
Rev. 4-54

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300
(GPO)



POSTMARK OF DELIVERING OFFICE
STRIKE BACK AT CANCER
GIVE
AMERICAN CANCER SOCIETY

Return to C. Clark U.S. District
(NAME OF SENDER)

Street and Number,
or Post Office Box,

REGISTERED ARTICLE

No. 16752
INSURED PARCEL

MONTGOMERY,
ALABAMA.

DELIVERING
EMPLOYEE

- Deliver ONLY to addressee
- Show address where delivered

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this return receipt.

1 James E. Tolson
(Signature or name of addressee)

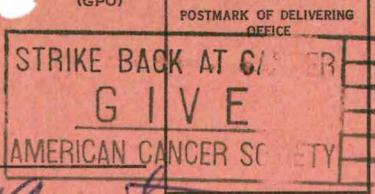
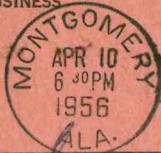
2 Kate Surman
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 4/19/56, 1956

Form 3811
Rev. 4-54

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300
(GPO)



Return to U.S. District Court
(NAME OF SENDER)

Street and Number, }
or Post Office Box, }

REGISTERED ARTICLE

No. 16753

INSURED PARCEL

No. _____

MONTGOMERY,
ALABAMA.

DELIVERING
EMPLOYEE

- Deliver ONLY to addressee
 Show address where delivered

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this return receipt.

1

John M. Pettit
(Signature or name of addressee)

2

John M. Pettit
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery *4/10/56*, 19

Form 3811
Rev. 4-54

U. S. GOVERNMENT PRINTING OFFICE 16-12421-3

EXHIBIT "A"

MEMORANDUM TO: The City Commission
From: Goodwyn & Smith
Re: PROPOSED PRIVATE TRANSPORTATION CORPORATION

This corporation proposes to operate a private transportation system to transport its own members throughout the City of Montgomery, Alabama.

In its operation, this non profit club proposes to use vehicles in good mechanical condition, to employ qualified chauffeurs and to purchase adequate liability insurance coverage for the protection of its members and the public generally. The said corporation will begin operation with a capital of not less than Twenty-five Thousand Dollars (\$25,000.00), which sum will include vehicles and equipment for the suitable carriage of passengers. It is to be a non profit corporation. No profit shall inure to the benefit of any individual. None of its officers shall receive any salary or other compensation for their service, except the Board of Directors shall be authorized to pay operators and other employees of the corporation.

This non profit club does not propose to offer public transportation in the City of Montgomery, Alabama. Its patrons shall be restricted to the membership of the corporation and no person shall be permitted transportation who is not a member in good standing. The membership shall be approved by the Board of Directors and no person shall be a member who is not approved by the Board of Directors.

This corporation proposes to operate scheduled routes in the City of Montgomery. Each member allowed carriage shall have membership identification and no person shall be allowed carriage who cannot prove to the operator of the vehicle that he is a member in good standing. It plans to service five (5) routes in its initial operation. These routes will be altered from time to time to suit the convenience of its members. No

route will be scheduled which its membership does not require.

This corporation will purchase a minimum of ten (10) vehicles of the type customarily used by city bus companies throughout cities comparable in population and area to the City of Montgomery. The incorporators have a tentative agreement to purchase such vehicles in a mechanically sound but used condition for the sum of approximately One Thousand Dollars (\$1,000.00) per vehicle. Adequate garage and parking facilities will be furnished on a temporary basis by one of the incorporators. Permanent facilities are being sought.

All operators will be approved by the President or some other officer of the corporation and no operator will be approved who is not a qualified chauffeur, licensed by the authorities of the City of Montgomery. Priority will be given those applicants for employment as operators who are experienced.

This corporation proposes to purchase a blanket insurance policy from a sound company (if desired, to be approved by the City Commission) with a Three Hundred Thousand Dollar (\$300,000) minimum coverage.

This corporation will not commence service for its membership until such time as the Montgomery City Commission authorizes its operation upon the public streets. It proposes to pay all State, County and City licenses, special taxes or other remuneration required of its operation, but it is to be expressly understood that its operation will not be that of a common carrier. Its duties shall be restricted solely to its membership.

This non profit club will begin to operate with a minimum capital of Twenty-five Thousand Dollars (\$25,000.00). This amount will be raised partially through donations and partially through loans from interested individuals. Additional capital will be raised through membership fees. Each member will be charged a membership fee of One Dollar (\$1.00). This

amount will be subject to change from from time to time as financial circumstances require. Each member will be charged the sum of \$.15 for each passage. This charge will be subject to change also.

Respectfully submitted,

GOODWYN & SMITH

By

O. J. Goodwyn

Received
JAN 24 1957
John P. White
John White

EXHIBIT B

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

We the undersigned, in order to form a corporation for the purposes hereinafter stated, under, and pursuant to the provisions of an act of the legislature of the State of Alabama, entitled "An act to provide for the organization, regulation, continuance and dissolution of corporations not for profit; and to confer and limit their powers, rights and privileges, and to impose their duties, obligations and responsibilities; and, to provide penalties for the unauthorized assumption of corporate powers by all persons, do hereby certify as follows:

First. The name of the corporation shall be THE REBEL CLUB.

Second. The corporation is to have perpetual existence.

Third. The nature of the business of the corporation and the objectives and purposes proposed would be transacted, promoted, or carried on by it are as follows:

(A.) To do all things authorized by Act No. 578 General Acts of Alabama 1955.

(B.) To operate a non-profit transportation company for the carriage of persons in the city of Montgomery, exclusively for those persons holding membership in the said corporation.

(C.) To transport such persons on motor buses or other vehicles throughout the City of Montgomery, Alabama.

(D.) To buy, sell, lease, and deal in motor buses, motor trucks, automobiles, and motors, fuels and accessories.

(E.) To operate and maintain garages, service stations, and terminal points.

(F.) To do generally every other thing necessarily incidental to the operation of a transportation company for its members.

(G.) To do all and everything necessary for the accomplishment of any of the purposes herein set forth either alone or in association with other corporations, firms or individuals and to do every act incidental or connected with the aforesaid business provided the same be not inconsistent with the laws under which this corporation is organized.

(H.) To borrow money and to make and issue notes, bonds, debentures, obligations, and evidences of indebtedness of all kinds whether secured by mortgage, pledge or otherwise, without limit as to amount and generally to make and perform agreements and contracts of every kind and description.

(I.) To obtain a franchise from the City of Montgomery or other sovereign authority granting the said corporation the privilege of operating a transportation company for its members.

Fourth. The corporation is to have only one class of membership but no person shall be entitled to membership in said corporation unless approved by the president or a vice-president and ratified by the Board of Directors, at a scheduled meeting of said Board.

Fifth. The affairs of the corporation shall be managed by the Board of Directors which shall consist of at least Six (6) members elected by the membership as prescribed by the by-laws of the corporation.

Sixth. The address of the corporation's registered office shall be Post Office Box 2011, Montgomery, Alabama, and the initial registered agent of such corporation at such address shall be Hugh Hollon.

Seventh. There shall be Six (6) directors. Their names and addresses are as follows:

- (1.) Hugh Hollon, 518 Augusta Ave., Montgomery, Ala.
- (2.) W. B. Wyatt, 2450 Ray Street, Montgomery, Ala.
- (3.) Frank Rowley, 3456 S. Perry St., Montgomery, Ala.
- (4.) W. P. Sanders, Montgomery, Ala.
- (5.) J. Jack Ingram, 71 Holliday Drive, Montgomery, Ala.
- (6.) Simeon McNiell, Montgomery, Alabama.

Eighth. The names and addresses of the incorporators are the same as those listed in the immediately preceding paragraph.

Ninth. The principal place for the transaction of the business and affairs of the said corporation shall be the City of Montgomery in the State of Alabama.

Tenth. The corporation shall commence when these articles of the corporation are filed in the office of the Judge of Probate of Montgomery County, Alabama, and continue until dissolved by its members as provided by the by-laws and Act No. 578 General Acts of Alabama 1955.

Eleventh. The corporation shall have no capital stock, but the members shall be charged a membership fee in an amount to be determined by the Board of Directors and set out in the by-laws of the corporation.

Twelfth. The names and addresses of the officers of the corporation shall be:

- Hugh Hollon - President - 518 Augusta Ave., Montgomery, Ala.
- W. P. Sanders - 1st. Vice-president - Montgomery, Ala.
- Frank Rowley - 2nd Vice-president - 3456 S. Perry St., Montg.
- W. B. Wyatt - Secretary - 2450 Bay Street, Montgomery, Ala.
- Simeon McNeill - Treasurer - Montgomery, Alabama.

Thirteenth. At all meetings of the members of the corporation, each member shall have one vote, said right to vote shall be exercised in a manner to be determined by the Board of Directors not inconsistent of the by-laws of the corporation.

Fourteenth. There shall be an annual meeting of the members and of the Board of Directors at times and places to be determined by the Board. Additional meetings of the members and of the Board of Directors may be called from time to time by The Board of Directors or the president.

Fifteenth. The corporation shall be a "not for profit corporation" as defined by Act No. 578 General Acts of Alabama 1955 and no part of the income of the corporation shall be distributable to or emure to the benefit of any of the members, directors or officers. The directors and all other officers shall serve without compensation unless expressly otherwise provided by vote of the Board of Directors.

IN WITNESS WHEREOF we have here unto set our hands and seals this _____ day of December, 1956.

<u>Hugh E. Hollon</u>	<u>W. P. Sanders</u>
<u>J. Jack Ferguson</u>	<u>Frank Rowley</u>
<u>W. B. Wyatt</u>	<u>Simeon McNeill</u>

Sworn to and subscribed before me this _____ day of December, 1957.

[Signature]
NOTARY PUBLIC

[Faint handwritten notes and stamps]

City

Division _____ Number _____

IN THE COURT OF APPEALS OF ALABAMA

U. S. DIST. COURT - MIDDLE DIST. - ALA.
DEFENDANT'S EXH. 4
DATE 5/11/50

ROSA PARKS,
Appellant
vs.
CITY OF MONTGOMERY,
Appellee

APPEALED FROM THE CIRCUIT
COURT OF MONTGOMERY COUNTY
ALABAMA

BRIEF AND ARGUMENT
OF
FRED D. GRAY
CHARLES B. LANGFORD
MONTGOMERY, ALABAMA
ROBERT L. CARTER
NEW YORK, NEW YORK
ATTORNEYS FOR APPELLANT

ROSA PARKS
Appellant

vs.

CITY OF MONTGOMERY
Appellee

IN THE COURT OF APPEALS

OF

ALABAMA

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal from a conviction of the defendant for violation of Title 48, Section 301 (31c), Code of Alabama, 1940, as amended, for refusing to give up her seat to white passengers pursuant to the order of a driver in charge of a bus of the Montgomery City Lines on which defendant was riding on December 1, 1955. For this refusal, defendant was removed from the bus, charged and convicted in the Recorders Court of the City of Montgomery for violating the state statute requiring segregation in public carriers and fined \$10 and cost. On appeal to the Circuit Court of Montgomery County, the defendant was tried de novo before the Honorable Eugene W. Carter, Circuit Judge, on February 22, 1956. The defendant filed demurrers raising several State and Federal Constitutional issues. The demurrers were overruled; and her conviction and fine was affirmed. The defendant now brings the matter here.

ERRORS RELIED ON

The Court erred in overruling the defendant's demurrers.

The Court erred in finding the defendant guilty of violating the laws of Alabama in that the provisions under which she was charged and convicted deny to defendant the equal protection of the laws and restrain her liberty without due process of the law as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

The Court erred in refusing to find that defendant's arrest was illegal in that neither the state nor the bus company could

adopt or enforce regulations with respect to the use of the facilities of a carrier for hire which allocates seats to the paying public on the basis of the passengers' race or color.

STATEMENT OF THE FACTS

This case was tried in the Circuit Court of Montgomery County on a stipulation of facts entered into and agreed upon by the counsel for the City of Montgomery and counsel for the defendant which is substantially as follows:

On the first day of December, 1955, Mrs. Rosa Parks, the defendant, was a paying passenger on a bus being operated for hire by the Montgomery City Lines, Inc., a private corporation, operating under a franchise issued to it by the City of Montgomery, Alabama. The Montgomery City Lines, Inc., is engaged in intra-state commerce in the operation of motor buses for the carrying of passengers for hire and the alleged violation for which the defendant is charged was committed within the city limits of the City of Montgomery, Alabama.

There were thirty-six seats assigned for passengers. Just prior to the alleged violation by the defendant the ten front seats were assigned to white persons and the back twenty-six seats were assigned to Negroes. The defendant was sitting on one of the first dual seats immediately behind those occupied by white passengers and all seats assigned to whites were occupied and all standing room in that section was taken. The evidence is in dispute as to whether or not there were vacant seats in the Negro section. In order to take on more white passengers who were at that time waiting to board the bus the driver, the agent in charge, requested Negro passengers on the row of seats immediately in the rear of the white section to give up their seats to white passengers. This would have made four more seats available to

whites and under such reassignment the white section would have been increased to fourteen seats and the Negro section decreased to twenty-two seats. The defendant, a Negro, refused to move and was arrested for such refusal.

The defendant was convicted in the Recorders Court of the City of Montgomery, Alabama, on December 5, 1955, and appealed to the Circuit Court for Montgomery County where her conviction was affirmed on February 22, 1956.

Exhibits showing the seating arrangement of the bus and Chapter 1, Section 8 of the Code of the City of Montgomery, Alabama, 1952; Act Number 130, of the General Acts of Alabama of 1947, page 40, approved July 18, 1947, (now appearing in pocket supplements as Title 48, Section 301 (31b and 31c) of the Code of Alabama 1940; Title 48, Section 301 (31A) appearing in pocket supplements of the Code of 1940, and Chapter 6, Sections 10 and 11 of the Code of the City of Montgomery, Alabama 1952 were placed in evidence.

Title 48, Section 301 (31c) Code of Alabama, 1940, as amended. Failure to Comply With Rules and Regulations As To Segregation of White and Colored Races reads as follows:

It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulations, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles carrying passengers for hire; of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for such offense. (1947, p. 40, Section 2, appvd. July 18, 1947.)

PROPOSITIONS OF LAW

a. Defendant's conviction constitutes a denial of the equal protection of the laws and due process guaranteed by the Fourteenth Amendment. See School Segregation Cases (Brown v. Board of Education, 347 U.S. 483; Bolling v. Sharpe, 347 U.S. 497); Flemming v. South Carolina Gas & Electric Co., 224 F2d 752 (CA 4th 1955), appeal dismissed, ___U.S.____, decided April 23, 1956; Dawson v. Mayor, ___U.S.____, 100 L.ed (Adv. p. 75); Holmes v. City of Atlanta, ___U.S.____, 100 L.ed (Adv. p. 76); Henderson v. United States, 339 U.S. 816.

b. Defendant's conviction cannot stand in that it is based upon laws which effect an unlawful classification within the meaning of the Fourteenth Amendment Bolling v. Sharpe, supra.

c. The state policy requiring segregation on public carriers is an unlawful restraint of liberty in violation of the Fourteenth Amendment. See Bolling v. Sharpe, supra; Edwards v. California, 314 U.S. 160.

d. The state's policy cannot be justified as a valid exercise of police power. Dawson v. Mayor, supra; Flemming v. South Carolina Electric & Gas Co., supra; Buchanan v. Warley, 245 U. S. 60; Morgan v. Virginia, 326 U. S. 373.

e. The "separate but equal" doctrine is no longer a valid yardstick with which to measure the constitutionality of defendant's conviction. Flemming v. South Carolina Gas & Electric Co., supra; Dawson v. Mayor, supra; Board of Trustees of the University of North Carolina v. Frasier, ___U.S.____, 100 L.ed. (Adv. p. 350); Hawkins v. Board of Control, ___U.S.____, 100 L.ed. (Adv. p. 348); School Segregation Cases, supra.

f. Indiscriminate discrimination does not constitute that equality which the Fourteenth Amendment was designed to protect.

Shelley v. Kraemer, 334 U. S. 1; Henderson v. United States,
supra; McLaurin v. Oklahoma State Regents, 339 U.S. 637.

ARGUMENT

A common carrier is required to protect its passengers against assault and interference with the peaceful completion of their journeys, New Jersey Steamboat Co. v. Brockett, 121 U.S. 637, and be ready and willing to provide equal service without distinctions or discrimination to all persons who use its services.

Here defendant merely asserted a right to the free and un-hindered use of the facilities of the Montgomery Bus Lines and refused to adhere to an unlawful state policy or regulation requiring segregation. There can be little doubt that the state could not deny to any person on the basis of race and color the right to use common carriers' facilities. See Mitchell v. United States, 313 U.S. 80. Here the state convicted defendant for refusing to give up her seat to a white passenger at the request of the driver in charge of the bus on which she was riding. The sole authority for the driver's request was the state's segregation policy set forth in Title 48, Section 301 (31c), Code of Alabama, as amended. But that policy deprives defendant's liberty in deprivation of her right to due process of law and is, therefore, unconstitutional. See Edwards v. California, supra; Bolling v. Sharpe, supra. A conviction for failure to adhere to such a state policy, therefore, cannot be sustained.

There would be no question concerning the illegality of defendant's conviction but for the "separate but equal" doctrine of Plessy v. Ferguson, 163 U.S. 537. But that decision can no longer be relied upon for the "separate but equal" doctrine has been riddled unto death. It was held inapplicable to housing,

Buchanan v. Warley, supra, and Shelley v. Kraemer, supra; rejected as having no place in the field of public education in School Segregation Cases (Brown v. Board of Education, supra; Bolling v. Sharpe, supra), in areas of public accommodation and recreation, Mayer v. Dawson, supra, and public parks, Holmes v. City of Atlanta, supra. And on Monday, April 23, 1956, that moribund doctrine received its deserved repose in South Carolina Gas & Electric Co. v. Flemming. In that case the United States Supreme Court dismissed as frivolous an appeal from the decision of the Court of Appeals of the Fourth Circuit outlawing a South Carolina statute requiring segregation by intrastate carriers on the grounds that segregation in intrastate commerce was unconstitutional.

In the Flemming case, Mrs. Flemming, a Negro passenger, boarded a bus owned and operated by the South Carolina Gas & Electric Co., and took a seat in front of one or two white passengers. Pursuant to terms of the state law, Negroes could not sit in front of or beside white persons. The bus driver ordered Mrs. Flemming to change her seat in compliance with the state law. She refused, but when he repeated his order a second time, she got off the bus prior to reaching her destination. Thereupon she brought suit for damages against the bus company, charging that its enforcement of the unconstitutional and discriminatory state law requiring segregation of intrastate passengers denied her rights to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States. The appeal was dismissed in the lower courts on the ground that Plessy v. Ferguson was controlling and the doctrine of "separate but equal" governed in the field of intrastate commerce. On appeal, the United States Court of Appeals for the Fourth Circuit

in a per curiam opinion, 224 F2d 752, reversed the lower court's judgment. The Court said at pages 752, 753 the following:

We do not think that the separate but equal doctrine of Plessy v. Ferguson, supra, can any longer be regarded as a correct statement of the law. That case recognizes segregation of the races by common carriers as being governed by the same principles as segregation in the public schools; and the recent decisions in Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.ed. 873 and Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.ed. 884, which relate to public schools, leave no doubt that the separate but equal doctrine approved in Plessy v. Ferguson has been repudiated. That the principle applied in the school cases should be applied in cases involving transportation, appears quite clearly from the recent case of Menderson v. United States, 339 U.S. 816, 70 S.Ct. 843, 94 L.Ed. 1302, where segregation in dining cars was held violative of a section of the interstate commerce act providing against discrimination. The argument that such segregation can be upheld as a proper exercise of the state police power was answered in the case of Dawson v. Mayor and City Council of Baltimore City, 4 Cir., 220 F2d 386, 387, where with respect to segregation in recreation centers we said:

***it is obvious that racial segregation in recreational activities can no longer be sustained as a proper exercise of the police power of the State; for if that power cannot be invoked to sustain racial segregation in the schools, where attendance is compulsory and racial friction may be apprehended from the enforced commingling of the races, it cannot be sustained with respect to public beach and bath-house facilities, the use of which is entirely optional.

An appeal was taken to the Supreme Court of the United States, and that Court dismissed the appeal as frivolous. The obvious bases for its decision is that the unconstitutionality of enforced racial segregation is now clearly and conclusively settled. In the light of this decision, there can be no question but that the Alabama statute pursuant to which defendant was convicted in this case is unconstitutional and that her conviction thereunder cannot be sustained.

CONCLUSION

We submit, therefore, that the conviction of this defendant is illegal and invalid and must be reversed.

Respectfully submitted,

113 Monroe Street
Montgomery, Alabama

Fred D. Gray

31½ Monroe Street
Montgomery, Alabama

Charles B. Langford

107 West 43rd Street
New York, New York

Robert L. Carter

Attorneys for Appellant

Certificate of Service

I hereby certify that a copy of the foregoing brief and argument was mailed, postage pre-paid to D. Eugene Loe, Esq., at 32 South Perry Street, Montgomery, Alabama, Attorney of record for the Appellee, on this the 27th day of April, 1956.

Fred D. Gray
Attorney for Appellant

*The Appellant request oral Argument
of this case.*

Fred D. Gray

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE

DISTRICT OF ALABAMA, NORTHERN DIVISION

AURELIA S. BROWDER, and)
SUSIE McDONALD and)
CLAUDETTE COLVIN, by Q. P.)
Colvin, next friend, and)
MARY LOUISE SMITH, by Frank)
Smith, next friend, and)
others similarly situated,)

Plaintiffs)

vs.)

NO. 1147)

W. A. GAYLE, CLYDE SELLERS)
and FRANK PARKS, individually)
and as members of the Board)
of Commissioners of the City)
of Montgomery, Alabama, and)
GOODWIN J. RUPPENTHAL, individually)
and as Chief of Police of the City)
of Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a Corporation, and JAMES F. BLAKE,)
and ROBERT CLEERE, and)
C. C. (JACK) OWEN, JERRY HITCHCOCK,)
and SYBIL POOL, as members of the)
ALABAMA PUBLIC SERVICE COMMISSION,)

Defendants)

FILED
R. E. Johnson
Clerk
District Court

Before RIVES, Circuit Judge, and LYNNE and JOHNSON, District Judges:

RIVES, Circuit Judge:

STATEMENT OF THE CASE

The purpose of this action is to test the constitutionality of both
the statutes of the State of Alabama ^{1/} and the ordinances of the City of

1/ Title 48, §301 (31a,b,c), Code of Alabama of 1940, as amended, which provide:

"Sec. 301(31a). Separate accommodations for white and colored races. - All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races, but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which the passenger belongs; and, if the passenger refuses to occupy the division to which he is assigned, the conductor or agent may refuse to carry the passenger on the vehicle; and, for such refusal, neither the conductor or agent of the motor transportation company nor the motor transportation company shall be liable in damages. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction,

25

Montgomery ^{2/} which require the segregation of the white and colored races on the motor buses of the Montgomery City Lines, Inc., a common carrier of passengers in said City and its police jurisdiction. \

1/ (Continued)

shall be fined not more than five hundred dollars for each offense; and each day's violation of this section shall constitute a separate offense.

"The provisions of this section shall be administered and enforced by the Alabama public service commission in the manner in which provisions of the Alabama Motor Carrier Act of 1939 are administered and enforced. (1945, p. 731, appvd. July 6, 1945.)

"Sec. 301(31b). Operators of passenger stations and carriers authorized to segregate white and colored races. - All passenger stations in this state operated by or for the use of any motor transportation company shall be authorized to provide separate waiting rooms, facilities, or space, or separate ticket windows, for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies and operators of vehicles, carrying passengers for hire in this state, whether intrastate or interstate passengers, are authorized and empowered to provide separate accommodations on each vehicle for the white and colored races. Any officer or agent of such motor transportation company or operator, in charge of any vehicle, is authorized to assign or reassign each passenger or person to a division, section or seat on the vehicle designated by such company or operator, or by such officer or agent, for the race to which the passenger or person belongs; and if the passenger or person refuses to occupy the division, section or seat to which he is so assigned, such officer or agent may refuse further to carry the passenger on the vehicle. For such refusal neither the officer nor agent, nor the motor transportation company, nor operator, shall be liable in damages. (1947, p. 40, §1, appvd. July 18, 1947.)

"Sec. 301(31c). Failure to comply with rules and regulations as to segregation of white and colored races. - It shall be unlawful for any person willfully to refuse or fail to comply with any reasonable rule, regulation, or directive of any operator of a passenger station in this state operated by or for the use of any such motor transportation company, or of any authorized officer or agent of such operator, providing separate waiting rooms, facilities, or space, or separate ticket windows, for white and colored races; or willfully to refuse or fail to comply with any reasonable assignment or reassignment by any officer or agent in charge of any vehicle of any such motor transportation company or of any operator of vehicles carrying passengers for hire, of any passenger or person to a division, section, or seat on such vehicle designated by such officer or agent for the race to which such passenger or person belongs; any person so refusing or failing to comply with any such reasonable rule, regulation, or assignment, as aforesaid, shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 for such offense. (1947, p. 40, §2, appvd. July 18, 1947.)"

2/ Section 10, Chapter 6, Code of the City of Montgomery, 1952, which provides:

"Every person operating a bus line in the city shall provide equal but separate accommodations for white people and negroes on his buses, by requiring the employees in charge thereof to assign passengers seats on the vehicles under their charge in such manner as to separate the white people from the negroes, where there are both white and negroes on the same car; provided, however, that negro nurses having in charge white children or sick or infirm white persons, may be assigned seats among white people.

"Nothing in this section shall be construed as prohibiting the operators of such bus lines from separating the races by means of separate vehicles if they see fit."

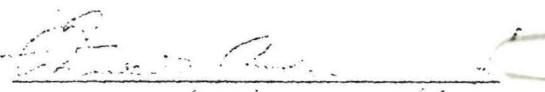
and its police jurisdiction. The application of that doctrine cannot be justified as a proper execution of the state police power. 16/

We hold that the statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States. This holding does not, however, become effective until the entry of formal judgment. The parties are requested to submit to the Court in writing within two weeks from the date of this opinion their views as to the form of judgment to be entered, and as to whether such judgment should be stayed in the event of an appeal.

16/ Shelley vs. Kraemer, 334 U.S. 1, 21; Morgan vs. Virginia, 328 U.S. 373, 380; Buchanan vs. Warley, 245 U.S. 60, 74; City of Birmingham vs. Monk, 5th Cir., 185 F. 2d 859, 862.

This the 5th day of June, 1956.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE

~~UNITED STATES DISTRICT JUDGE~~

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

FILED

JUN 29 1956

R. C. DOBSON
Clerk

By..... Deputy Clerk

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARY LOUISE SMITH,
by Frank Smith, next friend,
and others similarly situated,

PLAINTIFFS,

VS.

NO. 1147.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of
Commissioners of the City of
Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL,
individually and as Chief of
Police of the City of Montgomery,
Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and
C. C. (JACK) OWEN, JIMMY
HITCHCOCK, and SIBYL POOL, as
members of the ALABAMA PUBLIC
SERVICE COMMISSION,

DEFENDANTS.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

I. Notice is hereby given that W. A. Gayle, Clyde Sellers
and Frank Parks, individually and as members of the Board of Com-
missioners of the City of Montgomery, Alabama, and Goodwyn J.
Ruppenthal, individually and as Chief of Police of the City of
Montgomery, Alabama, Defendants above named, hereby appeal to the
Supreme Court of the United States from the final judgment dated
June 19, 1956, entered in this action on June 19, 1956, adjudging
and decreeing certain statutes of the State of Alabama and ordinances
of the City of Montgomery, Alabama, requiring segregation of the
races on buses, to be unconstitutional and void, and enjoining
these respondents from the enforcement thereof.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with all amendments and all exhibits thereto.
2. All motions, answers, and other pleadings which have been filed; including this notice of appeal.
3. The transcript of the entire proceedings and evidence, both oral and written, at the trial of this cause.
4. All orders, opinions, and judgments of the three-judge district court.

III. The following questions are presented by this appeal:

1. Does the three-judge district court have jurisdiction of this cause?
2. Ought the three-judge district court to exercise jurisdiction in this cause?
3. Are these defendants required by the provisions of Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, to enforce segregation of Negro and white passengers on motor buses operating wholly within the City of Montgomery, Alabama, and its police jurisdiction?
4. Are these Defendants officers of the State when enforcing the City ordinances requiring segregation of the races on City buses?
5. Are Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, and Sections 10 and 11

of Chapter 6 of the Code of the City of Montgomery, Alabama, 1952, requiring the segregation of Negro and white passengers on motor buses, constitutional and valid?

6. Does the enforced segregation of Negro and white passengers on motor buses operating in the City of Montgomery, Alabama, as required by Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, Alabama, 1952, deny and deprive Plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States, and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983?

7. Should the three-judge district court in this cause have abstained from proceeding to final judgment prior to determination of an appeal then pending before the Court of Appeals of Alabama wherein the same constitutional issues are presented?

8. Should the three-judge district court in this cause have abstained from proceeding to final judgment because of the pending suit in the Circuit Court of Montgomery County, Alabama, in which the judge of that court had decreed on May 9, 1956, that the statutes and ordinances involved in this case were constitutional and valid, time for appeal or further proceedings in said State case not having expired?

9. Should the three-judge district court in this cause have abstained from a determination of the applicability of certain state statutes within the City of Montgomery prior to determination of this issue in a state court, where it has been shown to the Court that the applicability is doubtful?

10. Should the three-judge district court have abstained from determination of the constitutionality of certain state statutes where it is doubtful that these statutes are applicable?

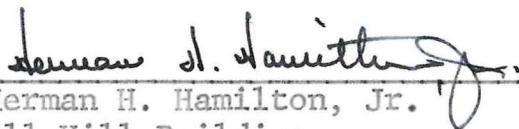
11. Did the evidence introduced in this cause authorize and justify the issuance of a permanent injunction against these defendants?

12. Is it within the power of the three-judge district court to issue a permanent injunction against the enforcement of a city ordinance by city officials?

13. Should the three-judge district court in this cause have rendered a judgment against Defendants W. A. Gayle, Clyde Sellers, Frank Parks and Goodwyn J. Ruppenthal as individuals?



 Walter J. Knabe
 511 Hill Building
 Montgomery, Alabama



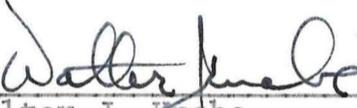
 Herman H. Hamilton, Jr.
 511 Hill Building
 Montgomery, Alabama

Counsel for W. A. Gayle, Clyde Sellers and Frank Parks, Individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, Individually and as Chief of Police of the City of Montgomery, Alabama, Defendants-Appellants.

I, Walter J. Knabe, one of the attorneys for W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of June, 1956, I served copies of the foregoing notice of appeal to the Supreme Court of the United States on the several parties plaintiff thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

TO: Charles D. Langford Attorney for Plaintiffs
 113 Monroe Street
 Montgomery, Alabama

Fred D. Gray Attorney for Plaintiffs
 113 Monroe Street
 Montgomery, Alabama



 Walter J. Knabe
 511 Hill Building
 Montgomery, Alabama

Of Counsel for W. A. Gayle, Clyde Sellers, and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, Defendants-Appellants.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARYLOUISE SMITH,
by Frank Smith, next friend,
and other similarly situated,

PLAINTIFFS,

VS.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of
Commissioners of the City of
Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL,
individually and as Chief of
Police of the City of Montgomery,
Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F.
BLAKE and ROBERT CLEERE, and
C. C. (JACK) OWEN, JIMMY HITCH-
COCK, and SIBYL POOL, as members
of the ALABAMA PUBLIC SERVICE
COMMISSION,

DEFENDANTS.

FILED

JUN 29 1956

R. C. DOBSON
Clerk

By.....
Deputy Clerk

NO. 1147.

APPLICATION FOR STAY

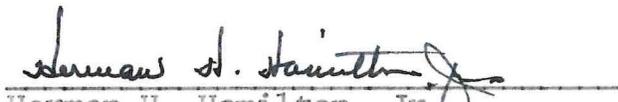
W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, appellants herein, having filed notice of appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered June 19, 1956, pray that said judgment be stayed in all respects pending final disposition of said appeal. This application and prayer for stay are presented to this

Honorable Court in accordance with provisions of the said judgment.

Respectfully submitted,



 Walter J. Knabe
 511 Hill Building
 Montgomery, Alabama



 Herman H. Hamilton, Jr.
 511 Hill Building
 Montgomery, Alabama

Counsel for W. A. Gayle, Clyde Sellers and Frank Parks, Individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, Individually and as Chief of Police of the City of Montgomery, Alabama, Appellants.

I, Walter J. Knabe, one of the attorneys for W. A. Gayle, Clyde Sellers and Frank Parks, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama, and Goodwyn J. Ruppenthal, individually and as Chief of Police of the City of Montgomery, Alabama, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of June, 1956, I served copies of the foregoing application for stay on the several parties plaintiff thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

TO: Charles D. Langford	Attorney for Plaintiffs
113 Monroe Street	
Montgomery, Alabama	
Fred D. Gray	Attorney for Plaintiffs
113 Monroe Street	
Montgomery, Alabama	



 Walter J. Knabe
 511 Hill Building
 Montgomery, Alabama

Supreme Court of the United States

Nos 342 & 343 , October Term, 19 56

W. A. Gayle et al., Individually and as Members of the
Board of Commissioners of the City of Montgomery,
Alabama, et al., etc.,

Appellants,

vs.

Aurelia S. Browder et al.; and

C. C. (Jack) Owen, et al., as Members of the Alabama
Public Service Commission, et al.,

Appellants,

vs.

Aurelia S. Browder et al.

APPEALS from the United States District Court for the
Middle District of the State of Alabama.

THIS CAUSE having been submitted on the statements
of jurisdiction, motion to affirm, and transcript of record,

ON CONSIDERATION WHEREOF, It is ordered by this Court
that the motion to affirm be, and it is hereby, granted.

IT IS FURTHER ORDERED AND ADJUDGED that the judgment
of the said District Court in this cause be, and it is
hereby, affirmed. *Brown v. Board of Education*, 347 U.S. 483;
Mayor and City Council of Baltimore v. Dawson, 350 U.S. 877;
Holmes v. Atlanta, 350 U. S. 879.

November 13, 1956

FILED

DEC 20 1956

A true copy JOHN T. FEY,
Test:

Clerk of the Supreme Court of the United States

R. C. DOBSON
Clerk

Deputy Clerk

BY *Clara P. Harrell*
Deputy

December 18, 1956

Supreme Court of the United States

No. 342 -----, October Term, 19 56

W. A. Gayle et al., Individually and as Members
of the Board of Commissioners of the City
of Montgomery, Alabama, et al., etc.,

Appellants,

vs.

Aurelia S. Browder et al.

clarification and
A petition for rehearing having been filed in this case,

Upon consideration thereof, It is ordered by this Court
that the said petition be, and the same is hereby, denied.

December 17, 1956



A true copy JOHN T. FEY,
Test:
Clerk of the Supreme Court of the United States

BY Crombie R. Barrett
Deputy

December 18, 1956

FILED

DEC 20 1956

R. C. DOBSON
Clerk

By.....
Deputy Clerk

File No.

Supreme Court of the United States

OCTOBER TERM, 19

Term No.

ORDER DENYING REHEARING

Filed, 19

Supreme Court of the United States

No. 343 -----, October Term, 19 56

C. C. (Jack)Owen, et al., as Members of the
Alabama Public Service Commission, et al.,

Appellants,

vs.

Aurelia S. Browder et al.

A petition for rehearing having been filed in this case,

*Upon consideration thereof, It is ordered by this Court
that the said petition be, and the same is hereby, denied.*

December 17, 1956



A true copy JOHN T. FEY,
Test:
Clerk of the Supreme Court of the United States

BY *Crombie P. Barrett*
Deputy

December 18, 1956

FILED

DEC 20 1956

R. C. DOBSON
Clerk

By.....
Deputy Clerk

File No.

Supreme Court of the United States

OCTOBER TERM, 19 _____

Term No.

ORDER DENYING REHEARING

Filed, 19 _____

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

FILED

AURELIA S. BROWDER, and
SUSIE McDONALD and CLAUDETTE
COLVIN, by Q. P. Colvin, next
friend, and MARY LOUISE SMITH,
by Frank Smith, next friend,
and others similarly situated,

Plaintiffs

vs.

W. A. GAYLE, CLYDE SELLERS and
FRANK PARKS, individually and
as members of the Board of
Commissioners of the City of
Montgomery, Alabama, and
GOODWYN J. RUPPENTHAL, individually
and as Chief of Police of the City
of Montgomery, Alabama, and
THE MONTGOMERY CITY LINES, INC.,
a corporation, and JAMES F. BLAKE,
and ROBERT CLEERE, and C. C. (JACK)
OWEN, JIMMY HITCHCOCK, and SIBYL
POOL, as members of the ALABAMA
PUBLIC SERVICE COMMISSION,

Defendants

JUN 28 1956

R. C. DOBSON
Clerk

By.....
Deputy Clerk

NO. 1147

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES

I. Notice is hereby given that the above named defendants, C. C. (Jack) Owen, Jimmy Hitchcock, and Sibyl Pool, as members of the Alabama Public Service Commission, hereby appeal to the Supreme Court of the United States from the final judgment dated June 19, 1956, and entered in this action on June 19, 1956, adjudging and decreeing certain statutes of the State of Alabama and ordinances of the City of Montgomery, Alabama, requiring segregation of the races on buses, to be unconstitutional and void, and enjoining these respondents from the enforcement thereof.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with all amendments and all exhibits thereto.
2. All motions, answers, and other pleadings which have been filed, including this notice of appeal.
3. The transcript of the entire proceedings and evidence, both oral and written, at the trial of this cause.
4. All orders, opinions, and judgments of the three-judge district court.

III. The following questions are presented by this appeal:

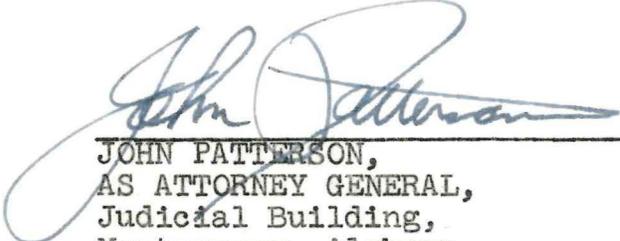
1. Does the three-judge district court have jurisdiction of this cause?
2. Are these defendants required by the provisions of Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, to enforce segregation of Negro and white passengers on motor buses operating wholly within the City of Montgomery, Alabama, and its police jurisdiction?
3. Are bus drivers of defendant, The Montgomery City Lines, Inc., officers of the State, when acting under statutory authority to enforce segregation of the races on buses driven by them in the City of Montgomery, Alabama?
4. Are Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, Alabama, 1952, requiring the segregation of Negro and white passengers on motor buses, constitutional and valid?
5. Does the enforced segregation of Negro and white passengers on motor buses operating in the City of

Montgomery, Alabama, as required by Section 301 (31a, 31b and 31c), Title 48, Code of Alabama 1940, as amended, and Sections 10 and 11 of Chapter 6 of the Code of the City of Montgomery, Alabama, 1952, deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States, and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983?

6. Should the three-judge court in this cause have abstained from proceeding to final judgment because of the pending suit in the Circuit Court of Montgomery County, Alabama, in which the judge of that court had decreed on May 9, 1956, that the statutes and ordinances involved in this case were constitutional and valid, time for appeal or further proceedings in said State case not having expired?

7. Did the evidence introduced in this cause authorize and justify the issuance of a permanent injunction against these defendants?

8. Is it legal for the three-judge court in this cause to issue a permanent injunction against the enforcement of a state statute by state officers who have never attempted or threatened to enforce said statute as applying to the segregation of Negro and white passengers on motor buses operating wholly within the City of Montgomery, Alabama, and its police jurisdiction?



JOHN PATTERSON,
AS ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.



WILLIAM N. McQUEEN,
AS ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.

Gordon Madison

GORDON MADISON,
AS ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.

Wm. F. Black

WM. F. BLACK,
State Office Building,
Montgomery, Alabama.

ATTORNEYS FOR DEFENDANTS, C. C. (JACK)
OWEN, JIMMY HITCHCOCK AND SIBYL POOL,
AS MEMBERS OF THE ALABAMA PUBLIC
SERVICE COMMISSION.

I, William N. McQueen, one of the attorneys for defendants, C. C. (Jack) Owen, Jimmy Hitchcock and Sibyl Pool, as members of the Alabama Public Service Commission, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 28th day of June, 1956, I served copies of the foregoing notice of appeal to the Supreme Court of the United States on the several parties plaintiff thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

TO: Charles D. Langford Attorney for Plaintiffs
113 Monroe Street
Montgomery, Alabama

Fred D. Gray Attorney for Plaintiffs
113 Monroe Street
Montgomery, Alabama

William N. McQueen

WILLIAM N. McQUEEN,
AS ASSISTANT ATTORNEY GENERAL,
Judicial Building,
Montgomery, Alabama.

ATTORNEY FOR DEFENDANTS, C. C. (JACK)
OWEN, JIMMY HITCHCOCK AND SIBYL POOL,
AS MEMBERS OF THE ALABAMA PUBLIC
SERVICE COMMISSION.

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN
DIVISION

AURELIA S. BROWDER, ET ALS,

Plaintiffs

vs.

W. A. GAYLE, ET ALS,

Defendants

NOTICE OF APPEAL OF DEFENDANTS,
C. C. (JACK) OWEN, JIMMY
HITCHCOCK, AND SIBYL POOL, AS
MEMBERS OF THE ALABAMA PUBLIC
SERVICE COMMISSION.

Name Parks
Surname

Rosa
Given Name

L.
Middle Name

Classification

28 MO
28 MI

TD

Alias

Nickname:

Reference

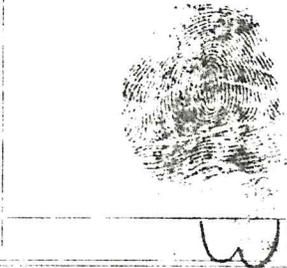
No. 79521

Color C.

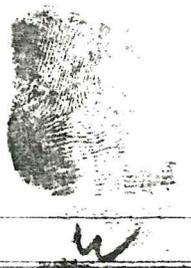
Sex Female

79521

RIGHT HAND

1. Thumb	2. Index finger <i>m</i>	3. Middle finger <i>0</i>	4. Ring finger	5. Little finger <i>✓</i>
				

LEFT HAND

6. Thumb	7. Index finger <i>m</i>	8. Middle finger <i>4</i>	9. Ring finger	10. Little finger
				

Impressions taken by

Mary Cannon

(Signature of official taking prints)

Number of impressions

Signature of person fingerprinted:

Rosa L. Parks

Files searched by

ROSA L. PARKS

Rosa L. Parks

Four fingers taken simultaneously

Four fingers taken simultaneously

Left Hand



Left thumb



Right thumb



Right Hand



Name **Colvin**
Surname

Claudette
Given Name Middle Name

Classification

31 I 2 20
28 00 17

Alias

Nickname:

Reference

No. 75931 Color

C
75931

Sex F.

RIGHT HAND

1. Thumb

2. Index finger

3. Middle finger

4. Ring finger

5. Little finger



W

W

W

W

W

LEFT HAND

6. Thumb

7. Index finger

8. Middle finger

9. Ring finger

10. Little finger



W

W

W

W

W

Impressions taken by

Classified by

Note amputations

Signature of person fingerprinted:

Young

(Signature of official taking prints)

Files searched by

X

Four fingers taken simultaneously

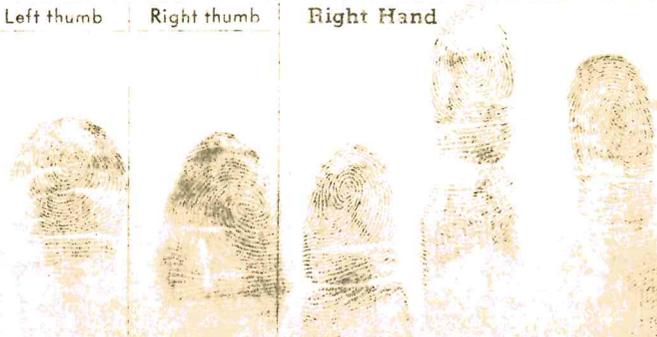
Four fingers taken simultaneously

Left Hand

Left thumb

Right thumb

Right Hand



POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest 12-1-55

Arrested by Day + Nixon

Charges Receiving a bag order of business
Chapter 6 Sec. 11 of City CodeResidence 634 Cleveland Court
Montgomery.

Disposition

#10 + out (app)

Place of Birth Tuskegee Ala.

Nationality Negro

Date of Birth Feb. 4 1913.

Age 42 Height 5 Feet 3 Inches

Weight 140 Eyes Brown.

Complexion Black

Hair Black.

Build Med.

Scars and Marks None

Employed by Montgomery Fair

Occupation alteration shop.

Relatives Husband, R. A. Parks.

634 Cleveland Court.

Remarks:

Case No.

441464

POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest 12.1-55

Arrested by Day + Nixon

Charges Refusing to obey order of bus driver
Chapter 6 Sec. 11 of City CodeResidence 634 Cleveland Court
Montgomery

Disposition

#10 + case (app)

Place of Birth

Tuskegee Ala.

Nationality Negro

Date of Birth Feb. 4 1913

Age 42 Height 5 Feet 3 Inches

Weight 140 Eyes Brown

Complexion Black

Hair Black

Build Med.

Scars and Marks None

Employed by Montgomery Fair

Occupation alteration shop

Relatives Husband, R. A. Parks.

634 Cleveland Court.

Remarks:

Case No.

441464

Misc

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12-1-55 19

Complainant J.F. Blake (wm)

Address 27 No. Lewis St. Phone No.

Offense Misc. Reported By Same as above

Address Phone No.

Date and Time Offense Committed 12-1-55 6:06 pm

Place of Occurrence In Front of Empire Theatre (On Montgomery Street)

Person or Property Attacked

How Attacked

Person Wanted

Value of Property Stolen Value Recovered

Details of Complaint (list, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.

We (Day & Nixon) also saw her.

The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.

Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

Warrant #114254

THIS OFFENSE IS DECLARED:

- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers *F. B. Day*
D. W. Nixon

Division Patrol Time 7:00 pm

12-1-55

M

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12/5 1955

Complainant Officers R.M. Hammond + C.A. Weaver

Address Police Dept Phone No. _____

Offense Disorderly Conduct Reported By _____

Address _____ Phone No. _____

Date and Time Offense Committed 12/5/55 7⁰⁰ am

Place of Occurrence Hall + Thurman

Person or Property Attacked _____

How Attacked _____

Person Wanted Fred Daniels C.M. (in jail)

Value of Property Stolen _____ Value Recovered _____

Details of Complaint (list, describe and give value of property stolen)

We were following a City bus, and as he stopped at the loading zone a negro female started to get on the bus, and Fred Daniels grabbed her and jerked her off, he is in jail charged with D.C. He did not give us any trouble at all.

- THIS OFFENSE IS DECLARED:
- UNFOUNDED
 - CLEARED BY ARREST
 - EXCEPTIONALLY CLEARED
 - INACTIVE (NOT CLEARED)

Officers R.M. Hammond + C.A. Weaver

Division Traffic Time 7:05

U. S. DIST. COURT - MIDDLE DIST. - ALA.

PLAINTIFF'S EXH 2

DATE 5/11/87

Copyright Positive

Misc

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 3/2/55-Wednesday 19

Complainant Robert Clare, white male

Address Montgomery City Lines Bus Inc. Phone No. 7321

Offense Ch. 6, Sec. 11 Reported By Above

Address - Phone No. -

Date and Time Offense Committed 3/2/55-3:41 P.M.

Place of Occurrence Bibb and Commerce St's

Person or Property Attacked See Below

How Attacked -

Person Wanted -

Value of Property Stolen - Value Recovered -

Details of Complaint (list, describe and give value of property stolen)

We received a call at Bibb and Commerce St's., in regards to seeing a bus driver of the Highland Gardens Bus. When we arrived there we were informed by the driver of the Highland Gardens Bus that there were two colored ~~males~~ females sitting opposite two white females, that refused to move back with the rest of the colored. These colored were sitting forward, left side, of the rear entrance. An unidentified colored female that was sitting in this disputed seat moved to the rear when we asked her to, but Claudette Colvin, age 15, colored female, refused. We then informed Claudette that she was under arrest. She struggled off the bus and all the way to the police car. After we got her in the police car she kicked and scratched me on the hand, also kicked me in the stomach. (Ward) Witnesses: Mr. Collins

Cameron, 623 W. Shawnee Dr., (WM) Mr. Glen N. Seabury, 1/2 1st Nat. Bank Bld'g., Ph. 2-5911, (WM)

- THIS OFFENSE IS DECLARED:
- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers Paul Headley-T. J. Ward

Division Patrol Time 5:25 P.M.

Misc

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12-1-55 19

Complainant J.F. Blake (wm)

Address 27 No. Lewis St. Phone No.

Offense Misc. Reported By Same as above

Address Phone No.

Date and Time Offense Committed 12-1-55 6:06 pm

Place of Occurrence In Front of Empire Theatre (On Montgomery Street)

Person or Property Attacked

How Attacked

Person Wanted

Value of Property Stolen Value Recovered

Details of Complaint (list, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.

We (Day & Mixon) also saw her.

The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.

Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

Warrant #14254

THIS OFFENSE IS DECLARED:

- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers J. B. Day
D. W. Mixon

Division Patrol

Time 7:00 pm
12-1-55

Surname

Given Name

Middle Name

28 MI

Alias

Nickname:

Reference

No. 79521 Color C. Sex Female

79521

RIGHT HAND

1. Thumb	2. Index finger <i>m</i>	3. Middle finger <i>0</i>	4. Ring finger	5. Little finger <i>✓</i>
				
<i>w</i>	<i>w</i>	<i>w</i>	<i>w</i>	<i>w</i>

LEFT HAND

6. Thumb	7. Index finger <i>m</i>	8. Middle finger <i>✓</i>	9. Ring finger	10. Little finger
				
<i>w</i>	<i>w</i>	<i>w</i>	<i>w</i>	<i>w</i>

Impressions taken by

Mary Cannon

(Signature of official taking prints)

Noted by

Note amplifications

Signature of person fingerprinted:

Files searched by

ROSA L. PARKS x *Rosa L. Parks*

Four fingers taken simultaneously

Four fingers taken simultaneously

Left Hand

Left thumb

Right thumb

Right Hand



5

U. S. DIST. COURT - MIDDLE DIST. - ALA.

DEPENDANT'S EXH

TO THE MONTGOMERY PUBLIC.

We, the Negro citizens of Montgomery, feel that the public has a right to know our complaints and grievances which have resulted in the protest against the Montgomery City Lines and our refusal to ride city busses. We, therefore, set forth here some of the many bitter experiences of our people, who have, at various times, been pushed around, embarrassed, threatened, intimidated and abused in a manner that has caused the meekest to rise in resentment:

COMPLAINTS:

1. Courtesy:

The use of abusive language, name calling and threats have been the common practices among many of the bus operators. We are ordered to move from seats to standing space under the threat of arrest, or other serious consequences. No regard for sex or age is considered in exercising this authority by the bus operator.

2. Seating:

The bus operators have not been fair in this respect. Negroes, old, young, men and women, mothers with babes in their arms, sick, afflicted, pregnant women, must relinquish their seats, even to school children, if the bus is crowded. On lines serving predominantly Negro sections, the ten front seats must remain vacant, even though no white passenger boards the bus. At all times the Negro is asked to give up his seat, though there is not standing room in the back. One white person, desiring a seat, will cause nine Negroes to relinquish their seats for the accommodation of this one person.

3. Arrests:

Numerous arrests have been made even though the person arrested is observing the policy as given us. This year the following persons have been arrested and convicted, although they were seated according to the policy given us by the bus company. They are Claudette Colvin, Alberta "Coote" Smith, and Mrs. Rosa Parks. Among others arrested at other times are Mrs. Viola White, Miss Mary Wingfield, two children from New Jersey, and a Mr. Brooks, who was killed by the policeman.

4. Two Fares:

Many house-servants are required to pay an additional fare if the bus is late getting to town, causing them to miss a bus going to Cloverdale or other distant points. Some of these have complained that on returning from work similar incidents have occurred necessitating the payment of double fares.

5. Making Change:

We understand that correct change should be given the operator, but there are times that such is not possible. Several bus operators have refused to make change for passengers and threatened to put them off for not having the exact amount. One one occasion a fellow-passenger paid the fare of one such passenger to prevent her from being put off.

5. Passing Up Passengers:

In many instances the bus operators have passed up passengers standing at the stop to board the bus. They have also collected fares at the front door and, after commanding Negro passengers to enter from the back door, they have driven off, leaving them standing.

7. Physical Torture:

One Negro mother, with two small children in her arm, put them on the front seat while she opened her purse for her fare. The driver ordered her to take the children from the seat, and without giving her the chance to place the children elsewhere, lunged the vehicle forward, causing the small children to be thrown into the aisle of the bus.

8. Acknowledgement:

Not all operators are guilty of these accusations. There are some who are most cordial and tolerant. They will go to the extent of their authority to see that justice and fair play prevail. To those we are grateful and sympathetic.

9. Adjudication:

Every effort has been used to get the bus company to remove the causes of these complaints. Time and time again complaints have been registered with the bus company, the City Commission and the manager of the bus company. Committees of both sexes have conferred but to no avail. Protests have been filed with the mayor, but no improvement has been made.

In March we held a conference with the Manager of the Montgomery City Lines and made a very modest request: (1) that the bus company attorney meet with our attorneys and discuss the situation.

A committee met with the Mayor and Associate Commissioners when the bus company requested a raise in fare. No protest was made against the raise, but only against seating and courteous treatment of passengers. Nothing came of this and Negroes were treated worse after the increase in bus fare than before.

The Great Decision:

The bus protest is not merely in protest of the arrest of Mrs. Rosa Parks, but is the culmination of a series of unpleasant incidents over a period of years. It is an upsurging of a ground swell which has been going on for a long time. Our cup of tolerance has run over. Thousands of our people, who have had unhappy experiences, prefer to walk rather than endure more. No better evidence can be given than the fact that a large percent of the Negro bus riders are now walking or getting a ride whenever and wherever they can.

Our Proposal:

The duly elected representatives of the people have the approval of the bus riders to present three proposals:

1. That assurance of more courtesy be extended the bus-riders. That the bus operators refrain from name calling, abusive language and threats.
2. That the seating of passengers will be on a "First-Come, First-Served" basis. This means that the Negro passengers will begin seating from the rear of the bus toward the front and white passengers from the front toward the rear until all seats are taken. Once seated, no passenger will be compelled to relinquish his seat to a member of another race when there is no available seat. When seats become vacant in the rear Negro passengers will voluntarily move to these vacant seats and by the same token white passengers will move to vacant seats in the front of the bus. This will eliminate the problem of passengers being compelled to stand when there are unoccupied seats. At no time, on the basis of this proposal, will both races occupy the same seat. We are convinced by the opinions of competent legal authorities that this proposal does not necessitate a change in the city, or state laws. This proposal is not new in Alabama, for it has worked for a number of years in Mobile and many other Southern cities.
3. That Negro bus drivers be employed on the bus lines serving predominately Negro areas. This is a fair request and we believe that men of good will, will readily accept it and admit that it is fair.

Nature of Movement:

1. Non violence—

At no time have the participants of this movement advocated or anticipated violence. We stand willing and ready to report and give any assistance in exposing persons who resort to violence. This is a movement of passive resistance, depending on moral and spiritual forces. We, the oppressed, have no hate in our hearts for the oppressors, but we are, nevertheless, determined to resist until the cause of justice triumphs.

2. Coercion—

There has not been any coercion on the part of any leader to force any one to stay off the busses. The rising tide of resentment has come to fruition. This resentment has resulted in a vast majority of the people staying off the busses willingly and voluntarily.

3 Arbitration—

We are willing to arbitrate. We feel that this can be done with men and women of good will. However, we find it rather difficult to arbitrate in good faith with those whose public pronouncements are anti-Negro and whose only desire seems to be that of maintaining the status quo. We call upon men of good-will, who will be willing to treat this issue in the spirit of Him whose birth we celebrate at this season, to meet with us. We stand for Christian teachings and the concepts of democracy for which men and women of all races have fought and died.

THE NEGRO MINISTERS of Montgomery and Their Congregations

THE METHODIST MINISTERIAL ALLIANCE,
The Rev. J. W. Hayes, President

THE BAPTIST MINISTERS' CONFERENCE
The Rev. H. H. Hubbard, President
The Rev. R. D. Abernathy, Secretary

THE INTER-DENOMINATIONAL MINISTERIAL ALLIANCE
The Rev. L. Roy Bennett, President
The Rev. J. C. Parker, Secretary

THE MONTGOMERY IMPROVEMENT ASSOCIATION
Dr. M. L. King, Jr., President

The Rev. G. J. Vickers, Secretary

6 Alabama, 1952 are hereby placed in evidence.

Respectfully submitted,

/s/ D. Eugene Loe
D. Eugene Loe

/s/ Fred D. Gray
Fred D. Gray

/s/ Charles D. Langford
Charles D. Langford

Feb. 22, 1956.

Filed in open Court and made a part of record of this case.

Carter
Judge

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Montgomery City Lines, Inc., a private corporation, operating under a franchise issued to it by the City of Montgomery, Alabama. The Montgomery City Lines, Inc., is engaged in intrastate commerce in the operation of motor busses for the carrying of passengers for hire and the alleged violation for which the defendant is charged was committed within the city limits of the City of Montgomery, Alabama.

Attached hereto and marked Exhibit "A" is a plan of the seating arrangement of the bus on which the alleged violation occurred. There were thirty-six seats assigned for passengers. Just prior to the alleged violation by the defendant the ten front seats were assigned for white persons and the back twenty-six seats were assigned for negroes. The defendant was sitting on one of the first dual seats immediately behind those occupied by white passengers and all seats assigned to whites were occupied and all standing room in that section was taken. Negroes were also standing in the negro section. The evidence is in dispute as to whether or not there were vacant seats in the negro section. In order to take on more white passengers who were at that time waiting to board the bus the driver, the agent in charge, requested the passengers on the row of seats immediately in the rear of the white section to give up their seats to white passengers. This would have made four more seats available to whites and under such reassignment the white section would have been increased to fourteen seats and the negro section decreased to twenty-two seats. The defendant, a negro, refused to move in accordance with the request of the bus driver, the agent in charge, and was arrested for such refusal.

The defendant was convicted in the Recorders Court of the City of Montgomery, Alabama, and appealed to this Court where the case is at issue.

Chapter 1, Section 8 of the Code of the City of Montgomery, Alabama, 1952; Act Number 130, of the General Acts of Alabama of 1947, page 40, approved July 18, 1947, (now appearing in pocket supplements as Title 48, Section 301 (31b and 31c) of the Code of Alabama 1940; Title 48, Section 301 (31A) appearing in pocket supplements of the Code of 1940, and Chapter 6, Sections 10 and 11 of Code of City of Montgomery,

4

301 (30a), Title 48, Code of Alabama, 1940 as amended are unconstitutional, in that they violate the Fourteenth Amendment of the Constitution of the United States.

(3) That Section 301 (30c), Title 48, Code of Alabama, 1940, as amended (the 1947 Act of the State of Alabama, Page 40), under which the Defendant is charged with having violated and Section 301 (30a), Title 48, Code of Alabama, 1940 as amended are unconstitutional, in that they violate the Fourteenth Amendment of the Constitution of the United States as applied to this Defendant.

(4) That Section 301 (30c), Title 48, Code of Alabama, 1940, as amended (the 1947 Act of the State of Alabama, Page 40), under which the Defendant is charged with having violated and Section 301 (30a), Title 48, Code of Alabama, 1940 as amended are unconstitutional, in that they violate Section 1981 of Title 42 of the United States Code.

/s/ Charles D. Langford

/s/ Fred D. Gray

Attorneys for Defendant

Tried in open Court this the 22nd day of Feb., 1956.

Carter
Judge

CITY OF MONTGOMERY	*	IN THE CIRCUIT COURT OF
VS.	*	MONTGOMERY COUNTY, ALABAMA,
ROSA PARKS,	*	AT LAW.
DEFENDANT	*	CASE NO. 4559
	*	

AGREED STIPULATION OF FACTS

By agreement of Counsel D. Eugene Loe, Esq., Attorney for the City of Montgomery, Alabama, a municipal corporation organized and existing under the laws of the State of Alabama, and Fred D. Gray, Esq., and Charles D. Langford, Attorneys for Rosa Parks, defendant, the facts of the above styled cause are stipulated as follows:

On the 1st day of December, 1955, Rosa Parks, the defendant, was a paying passenger on a bus being operated for hire by the

3

section or seat on such vehicle designated by such officer or agent for the race to which such passenger belonged.

contrary to the provisions of a valid existing ordinance of the city of Montgomery, duly adopted and ordained by the Board of Commissioners of said City, prior to the commission of said act or acts, and prescribing the punishment for violations thereof,

/s/ D. Eugene Loe

Attorney for the City of Montgomery

~~XXXXXXXXXX~~

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
CITY OF MONTGOMERY

VS.

ROSA PARKS

DEMURRER

LAW OFFICES

FRED D. GRAY

113 Monroe Street

Montgomery, Alabama

CITY OF MONTGOMERY

VS.

ROSA PARKS

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Now comes the Defendant in the above entitled cause and demurs to the complaint charged therein, for grounds of demurrer set down and assigns,

(1) That Section 301 (30c), Title 48, Code of Alabama, 1940, as amended (the 1947 Act of the State of Alabama, Page 40), under which the Defendant is charged with having violated and Section 301 (30a), Title 48, Code of Alabama, 1940 as amended are unconstitutional, in that they violate Article One, Section One of the Constitution of the State of Alabama.

(2) That Section 301 (30c), Title 48, Code of Alabama, 1940, as amended (the 1947 Act of the State of Alabama, Page 40), under which the Defendant is charged with having violated and Section

1

CITY OF MONTGOMERY
VS.
ROSA PARKS

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA.
FEBRUARY TERM, 1956.
NO. 4559

BEFORE: HON. EUGENE W. CARTER, CIRCUIT JUDGE,
in Chambers.

Montgomery, Alabama, Wednesday, February 22, 1956.
9:30 o'clock A. M.

Present:

D. EUGENE LOE, ESQ.,
WALTER J. KNABE, ESQ.,
DRAYTON N. HAMILTON, ESQ., and
MILES S. HALL, ESQ., for the City.

FRED D. GRAY, ESQ., and
CHARLES D. LANGFORD, ESQ., for Defendant.

Rosa Parks, Defendant.

MR. LOE: We would like the record to show that the Rosa Parks case came up for hearing in open Court, and that Rosa Parks appeared together with her counsel.

And we want the record to further show the defendant's demurrers were argued in open Court and the Court overruled them.

LAWYER GRAY: And the defendant takes exception to the Court's ruling.

MR. LOE: And the case was then placed at issue upon the complaint of the City of Montgomery which was filed in the Circuit Court, No. 4559.

This is an agreed stipulation of facts entered into by counsel in the case, and Rosa Parks in open Court acknowledges that she has read the stipulation of facts and the contents therein are true, and she agrees to said stipulation of facts in lieu of a formal trial of the case.

5

I believe that is all unless they have some other suggestion.

LAWYER GRAY: No. I think it is covered.

MR. LOE: Of course, all the law is stipulated.

THE COURT: Under the construction of the law the demurrers really decide the case.

Under the stipulation here and the authority of the law, the Court will hold her guilty and assess the same fine she received in the lower Court.

~~EXHIBIT~~

NO. 4559

CITY OF MONTGOMERY

VS.

ROSA PARKS

COMPLAINT

Filed in office this 18 day of Feb., 1956.

J. R. Matthews

Clerk

THE STATE OF ALABAMA }
COUNTY OF MONTGOMERY }

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY:

The City of Montgomery, Alabama, a municipal corporation organized and existing under the laws of the State of Alabama, by its attorney, complains that, on or about the 1st day of December, 1955, within twelve months prior to the commencement of this prosecution, and within the corporate limits or the police jurisdiction of said city.

Rosa Parks did violate Chapter 1, Section 8 of the Code of the City of Montgomery, Alabama, 1952, in that in violation of the provisions of the General Acts of Alabama of 1947, page 40, approved July 13, 1947, she did willfully refuse or fail to comply with the assignment or reassignment by the officer or agent in charge of a motor vehicle transporting passengers for hire, of a passenger to a division,

POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest

3-2-55

Arrested by

Ward - Headley

Charges

A+B, D.C. Ch6 Sec 11 CF.

Residence

622 E. Dixie Drive

Disposition

Juvenile Ct.

Place of Birth

Birmingham, Ala

Nationality

negro

Date of Birth

Sept 5, 1939

Age

15

Height

Feet

Inches

Weight

115

Eyes

Brown

Complexion

Dark

Hair

Black

Build

med

Scars and Marks

none

Employed by

Occupation

School

~~(Name)~~ Relatives

Mary Ann Calvin

622 E. Dixie Dr.

Remarks:

Info. received once phone from Mrs Deas of J.C. John Mathews C.I.
 Tried in Juvenile Court by Judge Hill. Pined as a Delinquent
 and placed on probation as a Ward of the State pending good
 behavior. Appealed to Circuit Court 3-28-56.
 Circuit Court send the case back to Juvenile Court to stand
 as Judge Hill ruled.

R.D. Mackey, Sgt. 5-10-56
 Records Bureau

POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest 12.1-53.

Charges Refusing to obey order of bus driver
Chapter 6 Sec. 11 of city code

Disposition #10 + out (app)

Nationality Negro

Age 42 Height 5 Feet 3 Inches

Complexion Black

Build Med.

Scars and Marks None

Employed by Montgomery Fair

Relatives Husband, R. A. Parks.
634 Cleveland Court.

Remarks:

Arrested by Day + Nixon

Residence 634 Cleveland Court
Montgomery

Place of Birth Tuskegee Ala.

Date of Birth Feb. 4 1913.

Weight 140 Eyes Brown

Hair Black

Occupation attraction shop.

Case No. 44146H

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12-1-55 19

Complainant J.F. Flake (wn)

Address 27 No. Lewis St. Phone No.

Offense Misc. Reported By Same as above

Address Phone No.

Date and Time Offense Committed 12-1-55 6:06 pm

Place of Occurrence In Front of Empire Theatre (On Montgomery Street)

Person or Property Attacked

How Attacked

Person Wanted

Value of Property Stolen Value Recovered

Details of Complaint (list, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.

We (Day & Nixon) also saw her.

The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.

Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

Warrant #14254

- THIS OFFENSE IS DECLARED:
- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers *F. B. Day*
D. W. Nixon

Division Patrol Time 7:00 pm
12-1-55

Misc
★
②

POLICE DEPARTMENT
CITY OF MONTGOMERY

sent to Nany Malawan
4/20/89

Date 12-1-55 19

Complainant J.F. Blake (wm)

Address 27 No. Lewis St. Phone No.

Offense Misc. Reported By Same as above

Address Phone No.

Date and Time Offense Committed 12-1-55 6:06 pm

Place of Occurrence In Front of Empire Theatre (On Montgomery Street)

Person or Property Attacked

How Attacked

Person Wanted

Value of Property Stolen Value Recovered

Details of Complaint (list, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.

We (Day & Mixon) also saw her.

The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.

Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

Warrant #11254

- THIS OFFENSE IS DECLARED:
- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers F. B. Day
D. W. Mixon

Division Patrol Time 7:00 pm
12-1-55

POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest 12-1-55

Charges Receiving the above order of business
Chapter 6 Sec. 11 of city code

Disposition

#10 + out (app)

Nationality Negro

Age 42 Height 5 Feet 3 Inches

Complexion Black

Build Med.

Scars and Marks None

Employed by Montgomery Fair

Relatives Husband, R. A. Parks.

634 Cleveland Court.

Remarks:

Case No.

44/46H

Arrested by

Day + Mison

Residence

63 + Cleveland Court
Montgomery.

Place of Birth

Tuskegee Ala.

Date of Birth

Feb. 4 1913.

Weight 140

Eyes Brown.

Hair

Black.

Occupation

attraction ships.

POLICE DEPARTMENT

MONTGOMERY, ALABAMA

Date of Arrest 12-1-53

Arrested by Day + Nixon

Charges Raising the alarm order of building
Chapter 6 Sec. 11 of city codeResidence 634 Cleveland Court
Montgomery

Disposition #10 + cost (app)

Place of Birth Tuskegee Ala.

Nationality Negro

Date of Birth Feb. 4 1913

Age 42 Height 5 Feet 3 Inches

Weight 140 Eyes Brown

Complexion Black

Hair Black

Build Med.

Scars and Marks None

Employed by Montgomery Fair

Occupation alteration shop

Relatives Husband, R. A. Parks.
634 Cleveland Court.

Remarks:

Case No. 4146H

U.S. District Court for the
Middle District of Alabama

Browder v. Gayle, Civil Action
No. 1147-N

Court Reporter's Transcript of
Hearing Held May 11, 1956

(FARC 449 934)

(Accession No. 67a.893, Box No. 426114)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

May 11, 1956.

AURELIA S. BROWDER, and)
SUSIE McDONALD, and)
CLAUDETTE COLVIN, by Q, Q.)
Colvin, next friend, and)
MARY LOUISE SMITH, by Frank)
Smith, next friend, and others)
similarly situated)

Plaintiffs,)

vs.)

W. A. GAYLE, CLYDE SELLERS,)
and FRANK PARKS, individually and)
as members of the Board of)
Commissioners of the City of)
Montgomery, Alabama, and)
GOODWYN J. RUPPENTHAL, individually)
and as Chief of Police of the City)
of Montgomery, Alabama, and)
THE MONTGOMERY CITY LINES, INC.,)
a Corporation, and JAMES F. BLAKE)
and ROBERT CLEERE, and)
C. C. (Jack) OWEN, JIMMY HITCHCOCK,)
and SIBYL POOL, as members of the)
ALABAMA PUBLIC SERVICE COMMISSION.)

Defendants.)

CIVIL ACTION

No. 1147.N

Before Judge Rives, Judge Lynne, and Judge Johnson.

FILED

JUL 23 1956

R. C. DOBSON
Clerk

By
Deputy Clerk

APPEARANCES:

Plaintiff :

Fred Gray,
Attorney,
Montgomery, Alabama

Charles D. Langford,
Attorney,
Montgomery, Alabama

Robert Carter,
Attorney,
New York, N. Y.

For defendants:

Walter Knabe,
Attorney,
Montgomery, Alabama

Drayton N. Hamilton,
Attorney,
Montgomery, Alabama

Herman H. Hamilton,
Attorney,
Montgomery, Alabama

Robert Thrun,
Attorney
Montgomery, City Lines,
Montgomery Alabama

Truman Hobbs,
Attorney,
Montgomery, Alabama.

Defendants:

C. C. (Jack) Owen,
Jimmy Hitchcock, and
Sibyl Poole,
As members of the
Public Service Com-
mission.
Montgomery, Alabama

John Patterson ,
Attorney General,
Judicial Building,
Montgomery, Alabama

Wm. McQueen,
Asst. Attorney General,
Judicial Building,
Montgomery, Alabama

Gordon Madison
Asst Attorney General,
Judicial Building,
Montgomery, Alabama

Wm F. Black,
State Office Building,
Montgomery, Alabama

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AURELIA BROWDER, Called as a witness first being duly sworn, testified as follows:

DIRECT EXAMINATION

Mrs. Gray:

- Q. State your name, Miss Browder?
- A. Aurelia Browder.
- Q. Where do you live ?
- A. 1012 Highland Avenue,
- Q. Prior to December 5, 1955, did you live here in Montgomery?
- A. Yes.
- Q. Prior to December 5, 1955, did you ride the City buses?
- A. Yes. Two to four times a day.
- Q. Have you been riding those buses since December 5, 1955?
- A. No.
- Q. Why did you stop riding them?
- A. I had stopped riding because I wanted better treatment. I knew if I would cooperate with my color I would finally get it.
- Q. Have you personally experienced any difficulty on the bus in connection with the seating arrangement?
- A. Yes, several times.
- Q. Will you please tell the Court what happened?
- A. April 29 of last year I was on the Day Street Bus, I got a transfer from Oak Park Bus in front of Price Drug Store, going out to get to the Dry Cleaners, where I would get out on Court and Day. After I rode up by the Alabama Gas Company bus driver had three of us to get up and stand to

let a white man and a white lady to sit down.

Q. When you say three of you, do you mean yourself along with two other Negroes?

A. Myself and two other Negroes. I was sitting in a seat and another lady beside me. And the seat just across from me there was just one colored person in there. And he made all three of us get up because he said we was in the white section of the bus.

Q. If you were permitted to sit any place you wanted on the bus, would you be willing to ride again?

A. Yes, I would.

That is all.

JUDGE RIVES: You may arrange to cross examine.

A. The Attorney for the Public Service Commission has no questions to ask this witness.

MR. KNABE: You say you stopped riding the buses about December 5, 1955, is that correct?

A. Yes, sir.

Q. And I believe you said you stopped riding at that time because you wanted better treatment, is that correct?

A. That is right.

Q. It is a fact, is it not, that at that time the Rev. King and several others, so called Improvement Association I believe, made such a demand, is that right?

A. No.

Q. They did make some requests, did they not?

A. I would not call it that.

Q. What would you call it then?

A. We, the Negroes, request the Rev. King, and not he over us.

Q. You didn't understand my question. Did Negro King ask three certain things at that time, did he not. One was, you said, for more courteous treatment on the part of the bus drivers, that is correct, isn't it?

A. The Reverend King did not ask that, the Negroes asked that.

Q. Very well, but he was the mouth piece for the negroes, was he not?

A. We employed him to be our mouth piece.

Q. I see. And that is one of the things that you asked for, that is correct is it not?

A. That is correct.

Q. And then you asked for seating, first come, first served, didn't you?

A. Yes.

Q. And then you asked for the employment of negro drivers, that is correct, isn't it?

A. Yes.

Q. And you said unless you were granted all three of them, you would not return to riding on the bus, is that correct?

A. Yes.

Q. In other words, you did not stop on account of segregation but you stopped riding before segregation issue was ever raised, that is correct isn't it?

A. It is the segregation laws of Alabama that caused all of it.

Q. Just answer the question, isn't it a fact that your mouth piece took

into

A. No! He did not put it into us!

Q. Is it not true that he put into the newspaper a statement of his requests, and he specifically stated in that, that the segregation statutes were not involved? Do you know that, didn't you read what he put in the papers?

A. Yes, I did.

Q. And that was in there, wasn't it?

A. Yes.

Q. And also your attorney sitting here, Attorney Gray, also at the meeting where they held it to adjust the differences, put out a mimeographed statement that the segregation laws were in effect, that is correct, isn't it?

A. Yes.

Q. And you had the bus boycott on at that time, that is correct, isn't it?

A. That is correct.

We have no other questions.

MR. THRUN, of the Montgomery City Lines, has no question.

SUSIE McDONALD, being duly sworn, testified as follows:

DIRECT EXAMINATION

ATTORNEY GRAY:

Q. State your name to the Court?

A. Susie McDonald.

Q. Where do you live?

A. Live on Cleveland Avenue.

Q. How long have you lived in the City of Montgomery?

A. All of my life.

Q. About how long is that?

A. Seventy seven years.

Q. Did you ride the City buses here in the City of Montgomery, back prior to December 5 1955?

A. Yes. Twice and sometimes three times a day.

Q. Have you rode the busses since that time?

A. No, I haven't.

Q. Why did you stop riding the buses on or about the 5th of December, 1955?

A. Well, I stopped because we were asking for it, but we didn't expect to get it, we didn't. We all had to stop, so I thought I would stop, too.

Q. Would you ride the buses if segregation was eliminated on the buses?

A. Yes.

Q. Were you involved in any incidence on the bus?

A. Only I had to get up and let some white people sit down. I was asked to move.

Q. You were asked to get up?

A. Yes, by the Cleveland Avenue bus driver. I don't know who they are. They asked me to move, I had to get up.

That is all.

MR. PATTERSON: No, questions.

CROSS EXAMINATION

MR. KNABE:

Q. You heard the questions which I asked a few minutes ago of the preceding witness, did you?

A. I heard some of them.

Q. I see. Rev. King was the one that the Negroes appointed to represent them, wasn't he?

A. I couldn't tell you very much about that.

Q. Now, when they stopped riding the buses, it was December 5 1955, was it not?

A. Yes, sir.

Q. At that time, there was no agitation of any type among the Negroes for a change in segregation laws or an interpretation of them, was there?

A. Well there wasn't any court orders, but we have been mistreated all the time.

Q. That is not the reason you stopped riding the buses?

Atty. Langford: Your Honors, I think all these questions are irrelevant. It is not what the Negroes in Montgomery have done, or will do, is not in issue in the case. The question is whether or not this particular person is one who has been injured in being subjected to segregation.

JUDGE RIVES: You have alleged the people stopped riding the buses for a particular reason and if segregation laws were declared in the matter that they would commence, I overrule your objection.

MR. KNABE: The bus boycott then, was started prior to the time, and you stopped riding the buses prior to the time any reference was made to any change in the segregation laws, or the anticipation of it.

A. I didn't stop prior to the time. I had to. I was sick and I couldn't go. But prior to it, I had been often mistreated.

Q. You then stopped riding the buses because of ill health, was it not?

A. No, not altogether, I was mistreated was why I had to stop.

Q. Well was it in former years that you were mistreated?

A. Yes, I was mistreated just a few months before the boycott.

Q. Well you didn't stop at that time did you?

A. No, sir.

Q. You stopped at the time there was agitation among the negroes to stop, didn't you?

A. Well, I don't follow the others, but I reach my own judgment. I stopped because I thought it was right. And that we were mistreated.

Q. But you stopped at the same time the others stopped, didn't you?

A. Yes.

Q. And at that time they made a public announcement of their grievances against the bus company.

A. That is right.

Q. And their grievances at that time said they wanted more courteous treatment, that was one of the main things, wasn't it?

A. Yes, sir.

Q. And that had nothing whatsoever to do with the segregation issue, did it?

A. That is what we asked for, we didn't want no social equality, we wanted what we asked for, we wanted recognition.

Q. I see, in other words, you stopped, you did not want equality of any type, but you merely wanted recognition?

A. That is right.

No further questions.

RE-DIRECT

AT Mr. GRAY:

Q. Will you ride the buses if segregation is removed?

MR. KNABE: We object to that question.

JUDGE RIVES: She has said that she will.

That is all. You may come down.

MARY LOUISE SMITH, next witness, being duly sworn, testified as follows:

DIRECT EXAMINATION.

AT Mr. LANGFORD:

Q. State your name?

A. Mary Louise Smith.

Q. Where do you live?

A. 201 Broadway, Chisholm.

Q. What is your age?

A. Nineteen years old.

Q. Who are your parents?

A. Frank Smith.

Q. That is your father?

A. Yes.

Q. Is your mother living?

A. No.

Q. Then he resides at the same address you gave a moment ago?

A. Yes.

Q. You are one of the plaintiffs in this case?

A. Yes, I am.

Q. You are one of the persons who had some incident that occurred before this suit started?

A. Yes.

Q. Do you at the present time ride the city buses?

A. No. I don't.

Q. How long has it been since you rode the city buses?

A. I rode it twice a day before this happened.

Q. Which happened?

A. Before December.

Q. Before December 5th, 1955 you rode it two days before then?

A. I rode it daily before then.

Q. You haven't ridden since?

A. No I have not.

Q. You stopped riding the buses as of that day?

A. Yes.

Q. Now, prior to that time, have you had anything to happen to you in any way, or any incidence?

A. Yes, I have.

Q. Will you tell the Court just what happened?

A. This particular incident took place on Highland Avenue Bus, on October 21, 1955. I was riding this bus and I was sitting on the bus side reserved for white and colored. I was sitting behind the side that said for colored. At this particular moment a white lady got on the bus and she asked the bus driver to tell me to move out of my seat for her to sit there. And he

asked me to move three times, and I refused. So he got up and said he would call the Cops. And he asked me to move. I told him : "I am not going to move out of my seat. I am not going to move anywhere, I got the privilege to sit here like any body else. And so he say I was under arrest, and he took me to the station.

Q. You were arrested at that time?

A. Yes, sir. I was.

Q. What happened after that?

A. They arrested me and they kept me in jail for about two hours or longer, and then they charged me \$5.00 and cost of Court.

Q. You were subsequently tried in the City Court?

A. Yes.

Q. And they fined you, how much?

A. Nine dollars.

Q. As I understand it, the bus on which you were riding had a sign, white on one side and colored on the other.

A. Yes. The card said this side for white and an arrow pointed to the back for colored, understand it

Q. As I understand it, that in effect was a segregated bus?

A. Yes.

Q. That incident happened perhaps because you did have segregation?

A. Yes.

Q. You are a negro, and you were required to move from that seat, to allow a white woman to sit down.

A. That is right.

Q. Had it not been for the rule - No, I am sorry. I will ask you this, do you know what you were convicted of at the time they took you from the bus?

MR. KNABE: We think the record will speak for that. We object to that. We would like for the records to be introduced unless she knows definitely what she was convicted of. We will furnish them any records they want.

A. MR. LANGFORD: I asked her if she knew. Do you know what you were convicted of.

JUDGE RIVES: Just answer yes, or no.

A. No I don't.

LANGFORD: You are in favor of segregation on the bus lines, are you not?

A. Yes, I was.

Q. Would you ride the bus again if the laws were changed

A. I would ride the city buses provided we had no segregation on the buses. On the city buses.

CROSS EXAMINATION

MR. KNABE:

Q. You said you were convicted back in October, 1955?

A. October 21, 1955.

Q. Did you have a lawyer at that time?

A. No.

Q. You didn't have any lawyer at all. You did not have lawyer Gray here or no other lawyer?

A. No, sir.

Q. You didn't take your case on up, you didn't appeal your case, did you?

A. No, sir. I did not.

Q. You were not interested at that time in the question of segregation, were you?

A. I have been interested all my life, because I have grown up in a period-

Q. When did you first employ Attorney Gray in this case?

Attorney Gray: I object your Honor, When she employed me has nothing to do with it. That is irrelevant.

MR. KNABE: One of our contentions is that all this is one scheme and plan. These people have the opportunity when this woman was in there to have tested everything that they asked for today. And we are trying to find out if at that time she was in contact with him and why it couldn't have gone on up in the usual course of procedure.

ATTY. GRAY; Your Honor, whether or not she decides to exhaust the State Judicial remedy under the Federal Code is a question of law and not a question of fact.

JUDGE RIVES: Sustain the objection.

MR. KNABE: Now, you said on this incident you mentioned here, you said "He said you are under arrest." Now who is he?

A. Policeman.

Q. The policeman, of the city of Montgomery?

A. Yes.

Q. It was not anybody on the City Lines, is that right?

A. Yes, sir.

Q. It was not the driver of the bus, was it?

A. Yes, he first tells me to get up and move.

Q. I asked you one question. You said: someone said you were under

arrest. Are you riding free at this time ?

A. No, I am not riding at all.

Q. You are not riding any of the free buses that the Churches are all furnishing you ?

A. We don't have no free buses.

Q. Do you mean you pay for the buses when you ride on them ?

A. What bus ?

Q. These station wagons ?

A. No, we ride those free.

Q. Now you are riding those free, then, aren't you ?

A. Yes, I am.

Q. All right. Now, you said you stopped riding on December 5, why did you happen to decide on that particular day ?

A. Well, I think one person has been treated wrong and somebody else has been treated wrong, I just feel like I want to cooperate and do what I can to help them.

Q. You say you feel you should cooperate, who are you cooperating with ?

A. With the colored people of Montgomery.

Q. Did you get together and agree to stop riding on December 5th ?

A. No. We didn't get together . We just stopped ourselves.

Q. You must have had ^a meeting. Who gave you instructions to stop on December 5th. Did you one say to the other, "I am going to stop riding," and every body at one time stopped ?

A. They must have said because nobody went back on the bus.

Q. Now, somebody said "Lets stop on a certain day." Now who was that ?

A. I really don't know.

Q. But that was at the time when you had your first negotiations with the Bus Company and with the City wasn't it? That you stopped, is that correct? That was on December 5th, that is the time you stopped riding the buses, wasn't it?

A. Yes.

Q. And at that time nothing was said about segregation whatsoever, was there?

A. Something has been said about segregation, as long as I have been living I have known myself.

Q. Well, you didn't represent^{to}/anybody anything about segregation, did you, to any of the officials at all?

A. Well I still

Q. Just answer the question, you, yourself, did not at any time, say anything about segregation to any of the officials, the City officials, did you?

A. I did not say anything to them.

Q. As a matter of fact, Rev. King represented you, didn't he?

A. No. He doesn't represent no one. We represent ourselves. We appointed him as our leader.

Q. You appointed him as your leader -

A. Our leader,

Q. But he did represent the colored people. He was the spokesman for the colored people, that is correct, is it not?

A. Yes, he and his assistants.

That is all.

ATTY. GRAY: You do object to segregation now?

A. Yes, I do.

Q. Do the rest of the Negroes in the Montgomery section object to segregation?

A. Yes, they do.

MR. KNABE: We object.

JUDGE RIVES: Overruled.

Mr. GRAY: That is all.

CLAUDETTE COLVIN: called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION:

Mr. GRAY:

Q. State your name?

A. Claudette Colvin.

Q. What is your address, Miss Colvin?

A. 658 Dixie Drive.

Q. How old are you?

A. Sixteen.

Q. Who are your parents?

A. C.P. Colvin and Mary Ann Colvin.

Q. You are one of the plaintiff's in this lawsuit?

A. Yes.

Q. Prior to December 5, 1955, last year, did you ride the City Buses?

A. Yes.

Q. How often did you ride?

A. Twice a day.

Q. Twice a day?

A. Yes.

Q. Have you rode the busses since then?

A. No.

Q. Did you have an incident at any time while you were riding the buses?

A. Yes.

Q. When did this incident occur?

A. March 2, 1955.

Q. What bus did you ride?

A. Highland Gardens.

Q. About what time was it?

A. About 2:30 PM.

Q. Where were you on the way to?

A. I was going home from school.

Q. Will you please tell the Court exactly what happened on March 2, 1955?

A. I rode the bus and it was turning in on Perry and Dexter Avenue, and me and some other school children, I sit on the seat on the left hand side, on the seat just above the emergency door, me and another girl beside me.

Q. You say another girl was sitting by you and another girl was sitting across from you, do you mean those two girls were Negroes?

A. Yes, sir. And he drove on down to the next block, and by the time

all the people got in there, he seen there were no more vacant seats. He asked us to get up, and the big girl got up but I didn't. So he drove on down into the Square, and some more people boarded the bus. So, Mrs. Hamilton, she got on the bus, and she sat down beside me, and that leaves the other seat vacant.

Q. You mean that from across the aisle the other two girls had gotten up when the bus driver requested them to?

A. Yes, sir. So, he looked back through the window and he saw us, and he was surprised to see she was sitting down, too. He asked her to get up then and he asked both of us to get up. She said she was not going to get up, she didn't feel like it. He drove on down to the next corner or block, rather. And he got up and asked us to get up. And she told him she was not going to get up that she paid her fare and that she didn't feel like standing. And so, he asked me to get up. So, he directly asked me to get up first. So I told him I was not going to get up. He said, "If you are not going to get up I will get a policeman." So, he went somewhere and got a policeman. The first policeman came in the back way and asked who it was? So he told the policeman who I was. Anyway he said, "Why are you not going to get up?" He said, "It is against the law here." So I tol him that I didn't know that it was a law that a colored person had to get up and give a white person a seat when there were not any more vacant seats and colored people were standing up. So he got off. And then two more policemen came in. He said "Who is it? And he was very angry about it. He said: That is not new I had trouble out of that thing before. So, he said "Aren't you going to get up?" He didn't say anything to Mrs. Hamilton then. He just said it to me. He said: "Aren't you going to

get up?" I said 'No.' He saw Mrs. Hamilton but he was afraid to ask her to get up. He said, " If any of you are not gentlemen enough to give a lady a seat you should be put in jail, yourself. And so, Mr. Harris, he got up and gave her a seat, and immediately got off the bus. He said , "You can have that seat I am getting off." And so she taken his seat and I didn't have a seat. So, he asked me, if I was not going to get up, I said, No, sir. I was crying then , I was very hurtbecause I didn't know that white people would act like that and I was crying. And he said" I will have to take you off." So, I didn't move. I didn't move at all. so, I just acted like a big baby. So he kicked me and one got on one side of me and one got the other arm and they just drug me out. And so I was very pitiful, it really hurt me to see that I have to give a person a seat, when all those colored people were standing and there were not any more vacant seats. I had never seen nothing like that. Well, they take me on down, they put me in a car and one of the motorcycle men, he says, "I am sorry to have to take you down like this." So, they put handcuffs on me through the window.

- Q. After that where did they take you?
- A. They taken me to the City Hall.
- Q. While you were at the City Hall, did any one ask your age?
- A. Yes , they asked my age and everything.
- Q. Where did you go from the City Hall?
- A. I went to the City Jail.
- Q. Did they mention anything to you about taking you to the Detention Home? The Juvenile Court instead of the City Jail?
- A. Yes, sir. One of the policemen

Q. So they took you to the City Jail?

A. Yes, sir.

Q. How long were you there?

A. It was over an hour.

Q. What happened when you got to the City Jail?

A. Well, all the people were staring at me, and asked me what was wrong. One of the policemen, said, "She didn't want to sit back there with the Negroes!" And so he said: "If any more of them act like that, she was the only one that didn't want to move back." So they put me in the cell and locked the door.

Q. And you stayed there until your parents came and made bond?

A. Yes, sir.

Q. Were you tried later in Juvenile Court?

A. Yes, sir.

Q. Were you tried for violating the segregation laws?

MR. KNABE: We object, unless she knows.

MR. GRAY: Do you know whether you were tried and convicted of violating the segregation laws?

A. I was.

MR. KNABE: We object to the question. We would like for him to ask her what she was convicted of. There are several segregation laws.

JUDGE RIVES: You can ask her if she knows what she was convicted of.

MR. GRAY: Do you know what you were charged with?

A. Yes, I do.

Q. What were you charged with?

A. I was charged with violating the City Code or certain sections of the

city code.

Q. Do you know whether or not that section was amended at the time of the trial?

A. I really don't know.

Q. But you were convicted?

A. Yes, I was.

Q. And if you were able to ride the busses here in Montgomery without being segregated on them would you be willing to ride?

A. No.

Q. Would you be willing to ride the bus if you could sit any place you wanted to on them?

A. Yes, sir.

Q. From your observation of your friends and your neighbors in your community, would they be willing to ride busses if they could sit any place they wanted to?

A. Yes, sir.

CROSS EXAMINATION

MR. KNABE:

Q. You have changed, that is, you and the other Negroes have changed your ideas since December 5, have you not?

A. No, sir. We haven't changed our ideas. It has been in me ever since I was born.

Q. But, the group stopped riding the busses for certain named things, that is correct, isn't it?

A. For what?

Q. For certain things that Rev. King said were the things you objected to?

✓ A. No, sir. It was in the beginning when they arrested me, when they seen dirty how/they treated the Negro girls here, that they had began to feel like that all the time, though some of us just didn't have the guts to stand up.

Q. Did you have a leader when you started this bus boycott?

A. Did we have a leader? Our leaders is just we ourself. We are just a group of people -

Q. Did you select anyone to represent you like Rev. King?

A. We did select - quite naturally we are not going to have any ingorant person to lead us and s. we have to have someone who vis strong enough to speak up, someone with intelligence enough, we have got to have someone who can stand up and who knows the law and who knows , it is quite natural that we are not going to get up there ourselves, and some of them can't even read or write, but they knew they were being treated wrong.

Q. Is Rev. King the one you selected?

A. We didn't select him.

Q. You said you selected somebody who was better informed to represent you, now who did you select?

A. Well, I don't know anything about selecting , but we all just got together.

Q. But somebody spoke for your group , now who was it?

A. I don't know, we all spoke for ourselves .

Q. Now, just a minute ago I understood you to say that you selected somebody that knew the law better now who was that person?

A. Who knew the laws better, now a lot of people know the laws better.

Now, you are trying to say that Rev King is the leader of the whole thing?

Q. I am merely asking if Rev. King was the one of the leaders who represented you at that time, or one of the leaders who represented your group at that time, and expressed to the City Commission what the Negroes wanted?

A. Probably he was one of them who went to the City Commissioners, but I don't know.

Q. You don't know at all then?

A. I don't know nothing.

Q. Now, was Attorney Gray here one of those whom you felt knew the laws?

A. Yes, quite naturally, he is a lawyer.

Q. Now, did you know at that time that he sustained that the State law, didn't apply at all in the City of Montgomery?

A. What did you say about the State laws applying to the City of Montgomery.

Q. Did you know that that is what he was saying at that time?

A. I go to school myself and I know there is a lot of law, national law, state law and local law.

Q. Why did all of you stop riding on December 5th?

A. Because we were treated wrong, dirty and nasty.

Q. Now the reason you stopped riding was because you had three things you asked, is that right?

A. Three things we asked, Yes, we would still be treated the same way if we were to ask for these things.

Q. At that time, didn't you have in the paper an advertisement that represented your group, who spoke for your group, and you set forth three things that you felt were the things that caused the boycott?

A. The thing that caused the whole boycott. Rev. King caused the whole

trouble.

AT Mr. LANGFORD: If the Court please, I would like to interpose an objection to the question for the reason that the question is irrelevant and immaterial. Council is asking her questions that has to do with people other than the Plaintiff, and of a time that was previous to the filing of this suit. She and the rest of those people were for or against segregation. Definitely she has arrived at the conclusion that she no longer wanted to be segregated, but it was significantly of record that this suit was filed, and so that is immaterial. It proves nothing and is immaterial.

JUDGE RIVES: The Court does not think this line of inquiry is material. And we would like not to use up too much time. You have alleged what your position was prior to this suit and maybe it is relevant, but it is primarily a question of law that this suit is to determine.

MR. KNABE: All that we would like to bring out is, if they withdraw that allegation, then of course we do not care to pursue that line of questioning. But, certainly, when he alleges that she stopped the segregation and when their leader said partly that -

THE COURT: Don't take any more time than you have to.

MR. KNABE: If the Court will instruct her to answer the question once, we will be glad to, but she will not answer any question. She deliberately tries to evade every question.

THE COURT: You answer the question he asks you.

MR. KNABE: Is it--

AT Mr. LANGFORD: May it please the Court, council seems to be asking this witness what somebody else has said, relative to her position--

THE COURT: If she doesn't know she can say she doesn't know.

Mr. LANGFORD: If they would ask her if the man spoke for her , and she has already testified she does not like being seated in public transportation in segregation, Now, whether the Montgomery Association correctly presented her view in negotiation with the Bus Company or not, is irrelevant here. She has testified as to her view of it.

THE COURT: Let it go in for whatever it is worth, and pay strict attention to the questions, and any question you do not know, say you don't know, if you do know give a direct answer , do not try to make a speech here. Let her give a direct answer if she knows how.

MR. KNABE: Rev. King and the Improvement Association published in the Advertiser , did it not, a statement of the things you wanted in order to stop the bus boycott, did or did he not?

A. Yes.

Q. And those three things that he asked for was first more courteous treatment , is that correct?

A. Yes.

Q. And the second thing he asked for was seating from back to front for colored people, and from front to back for white people, is that correct?

A. I don't know about that.

THE COURT: Don't you have a printed publication for that?

MR. KNABE: We have if the Court will permit the admission of that.

THE COURT: Then put it in evidence.

MR. KNABE: I will offer it, yes. We have no further questions.

MR. GEORGE JONES, being called as a witness, being duly sworn,
testified as follows:

DIRECT EXAMINATION

ATTORNEY. GRAY:

Q. State your name, please?

A. George H. Jones.

Q. What is your occupation?

A. I am Registrar of the Circuit Court of Montgomery County.

Q. Mr. Jones, as Registrar of the Circuit Court of Montgomery County do all appeals from the Juvenile Court come to that body of the Court?

A. I believe so.

Q. In your office do you have a record of the proceedings as to what happened in the City of Montgomery, VS. Claudette Colvin?

A. Yes.

Q. Did you bring those records with you, Mr. Jones?

A. Yes. I did.

Q. We would like to see those records and ascertain from them what she is charged with?

THE COURT: You can identify it and pick out any part of the record you wish to offer.

ATTORNEY. GRAY. Thank you.

THE COURT: Any further questions from Mr. Jones?

A. No, sir.

MR. KNABE: Do the records show whether that case was appealed or not?

A. I am sure it does. I am not familiar with that.

Q. Is that the complete file ?

A. Yes, that is the complete file in our office.

THE COURT: It is from the Juvenile Court, has an appeal been taken ?

A. No, sir.

That is all.

MR. JOHN MATTHEWS, being called as a witness, being duly sworn,
testified as follows:

DIRECT EXAMINATION

MR. GRAY:

Q. State your name, please ?

A. John Matthews.

Q. What is your occupation ?

A. Circuit Clerk for Montgomery County.

Q. In your official capacity, of Clerk of that Court, did you have a case entitled City of Montgomery , vs, Rosa Parks ?

A. Yes.

Q. Was it tried in that court ?

A. It was.

Q. Do you have the records of that case ?

A. Yes, I have the Court file and I have a copy of a transcript of the appeal.

Q. You do have that here in court ?

A. Yes.

Q. May I have it , please ?

A. This is the Court file. It is the office copy. I'd like to take that back if I could.

THE COURT: Does the alternate copy contain all of the record?

MR. MATTHEWS: Yes, sir.

THE COURT: If it does let him have back his office copy.

AT MR. GRAY: I believe we can dispose of this matter in a few moments.

Mr. Matthews, will you read to us the first page of the transcript. Beginning at State of Alabama, Montgomery County, In the Circuit Court of Montgomery County.

A. The City of Montgomery, Alabama, a municipal corporation organized and existing under the laws of the State of Alabama, by its attorney, complains that, on or about the 1st day of December, 1955, within twelve months prior to the commencement of this prosecution, and within the corporate limits of the police jurisdiction of said city. Rosa Parks did violate Chapter 1, Section 8, of the Code of the City of Montgomery, Alabama, 1952, in that in violation of the provisions of the General Acts of Alabama, of 1947, page 40, approved July 18, 1947. she did willfully refuse or fail to comply with the assignment or reassignment by the officer or agent in charge of a motor vehicle transporting passengers for hire, or a passenger to a division, section or seat on such vehicle designated by such officer or agent for the race to which such passenger belonged. contrary to the provisions of a valid existing ordinance of the city of Montgomery, duly adopted and ordained by the Board of Commissioners of said City, prior to the commission of said act or acts, and prescribing the punishment for violation thereof.

D. Eugene Loer

Attorney for City of Montgomery.

THE COURT: Just introduce the first page if you want to.

MR. MATTHEWS: That is page 5.

MR. KNABE: We will introduce the entire record. Do you stipulate that is the alternate copy of the record?

MR. MATTHEWS: Yes.

MR. KNABE: And that case is on appeal?

A. Yes. It is on appeal to the Court of Appeals, State of Alabama. That is all.

We want to invoke the rules of Federal Procedure and call Mayor Gayle.

MAYOR W. A. GAYLE, being called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY Mr. LANGFORD:

Q. State your name, please?

A. W. A. Gayle. Chairman of the Board of Commissioners, City of Montgomery and Mayor of the City of Montgomery.

Q. You are Chairman on the Board of Commissioners?

A. I am President of the Board of Commissioners.

Q. What is the function of the Board of Commissioners?

A. Executive officer of the administrative office of the City of Montgomery.

Q. In charge of finance, regarding the financing of the city.

Q. You have charge of the--

A. General supervision of the entire city.

Q. Do you have charge of the enforcement of the laws?.

A. Not direct, but general supervision.

Q. What instructions, if any, have you given to the city police with respect to enforcing segregation?

A. We have told them to enforce all laws and ordinances that are on the books.

Q. Have you given instructions to the Commissioners to arrest the violators of the laws?

A. Sure. Everything, regardless of race, creed or color, if they break the law.

Q. I am talking about policemen now, with respect to segregation on the busses.

A. That is one of the laws, and I believe in segregation and I believe in enforcing the city ordinances concerning that.

Q. One further question, Mayor Gayle. I think you have answered it, but I want to make it clear for the record. Your instructions with respect to enforcing segregation laws, is to arrest persons who violate its operation now and in the future, is that correct?

A. That is right, that is in the law and that is the way we enforce the laws. That is my oath of office to enforce the laws.

No further questions.

MR. KNABE: Mayor Gayle, did you prior to the time of entering suit with this suit, have conferences with the various leaders, Negro leaders, including Rev. King?

A. Yes.

Q. And at that time did they make certain requests and state that those were the reasons for which the bus boycott had been begun?

A. That is right.

Q. Did they ever at any time say that there was any complaint with

reference to segregation?

A. Rev. King made the statement and there was no reference to segregation even on December 8.

Q. Since the bus boycott has there been disorder in the City of Montgomery due to racial conditions?

A. We are trying to hold it down as much as we can but there is danger of blood shed or something like that unless we strictly enforce the segregation laws.

THE COURT: Any further questions?

MR. LANGFORD: Yes, sir. How did you know there was going to be blood shed if segregation laws were enforced, Mayor Gayle? Had you taken a survey, too?

A. It is my responsibility to look after the welfare and comfort of the people. If I anticipate anything I try to avoid it before it gets here, we don't wait until after it happens. I will take any steps I can to assure the happiness and welfare and comfort of my people in Montgomery.

Q. Well, people have not been riding the busses for about six months, and nothing untoward has happened has it.

A. They had been shooting in the busses, knocked the windows out, and quite a number of beating up the colored women, things like that. Are you familiar with what has been going on in Montgomery?

Q. I am afraid I am not.

A. You mentioned the people not riding the busses, I can cite you in my own mother-in-law's cook, who was cut up and beat up on account of it.

Q. Now, Mayor, it is my understanding, I may be wrong, but the bus

Company, on or about April 24th, issued instructions that there was going to be no segregation on the busses.

A. We warned them to cancel that order, too.

Q. You not only warned them to cancel that order, but you enjoined them

A. We got out an injunction on it.

Q. During the days between April 24 to April 25, when the bus company's issued orders that there would be no segregation and I believe it was several days ago made the announcement when the issues came to trial on decision by the Circuit Court was there any blood shed or violence?

A. None that I know of.

That is all.

MR. KNABE: As a matter of fact, the Negroes did not change their method of seating at all during that time, did they?

A. No.

Q. Now, you said there were some Negroes who were injured during the time of this bus boycott, who injured those Negroes?

A. I don't remember the names of of the ones on that specific occasion, that jumped on this cook. He was fined in Court.

Q. Was it white or colored people?

A. It was colored people.

Q. Is it true that they were Negroes who were causing blood shed because they objected to Negroes riding on busses?

A. That is right.

Q. And they were interfering with their rights to ride on busses, and is it or is it not true, that the Negroes, most of them, wanted to ride the

buses and that a few Negro leaders kept them from riding on busses?

A. Some of them wanted to get back on the busses.

Q. How long have you been connected in an official capacity with the City of Montgomery?

A. I started 25 years ago, but that last question was withdrawn.

THE COURT: He said he couldn't definitely say what the Negroes wanted, but he would take his answer for whatever it was worth.

MR. KNABE: How long have you been connected in an official capacity?

A. Over 21 years.

Q. During that time have you come in close contact with the race situation here in Montgomery?

A. Yes.

Q. In Montgomery County and in the City of Montgomery?

A. Yes, sir.

Q. From your experience is it your opinion that there will be violence in the event that segregation is permitted? I mean that non-segregation is permitted?

A. In my opinion it would.

Q. Do you think that that violence would be severe?

A. I don't know what it would be, but it would be dangerous.

MR. LANGFORD: In your experience, Mayor Gayle, as a Chief executive officer of the City of Montgomery, do you think that it will ease and will help the racial situation in Montgomery by your membership and open advocacy of the policy of the White Citizen's Council as opposed to any rights of the Negroes at all?

not

A. I would ~~not~~ join anything that is illegal, or will promote violence, or anything like that. I will join only the ones that give me a legal receipt for law and order.

Q. Well, what does that mean?

A. It means that if they start anything out of line, or anything like that, I wouldn't be a member. I have got confidence in that organization that they will stick by the legal procedures.

Q. Is/^{it} your interpretation of law and order in the City of Montgomery, and the laws of the State of Alabama and the Constitution of the United States ?

A. I took an oath of office to support the Constitution of the United States and of the State of Alabama, and I intend to enforce these laws.

Q. One other question. You were a witness at the trial of Rev. King, were you not?

A. That is right.

Q I understand you to say that there had been a great deal of shooting, knifing and blood shed , in answer to one of the questions of City Council that local Negroes wanted to ride the busses.

A. Some of them have called me to get back so they could start riding again, but they were scared of "Goon Squads" .

Q. Do you know how many incidents of shooting, blood shed and knifing etc., was introduced at the trial of Rev. King?

A. No.

Q. Well, if I told you that only two Negro s testified that they had been molested would you accept that? Only two negroes out of the 20,000 Negroes

in Montgomery?

A. Do you say we had no bombing, do you say we had no bombing either?

The only one I know of is the one that happened to my mother-in-law's cook.

The rest of them was routine business, that happened as the law enforcement of the law.

Q. Well, the fact of the matter is you don't know of many shootings that have been in interference of Negroes riding the busses, do you?

A. They have called me and wanted to get back on the busses and they were afraid to.

Q. In what areas, or what places, have you been familiar with, Mayor Gayle, where there has been a break-down of segregation, of pools, parks, and so on?

A. Do you mean here in Montgomery.

Q. Are you familiar with any area where segregation is now in operation?

A. I am not familiar with any areas of segregation.

Q. Do you know that in some sections of the country, for example of Texas, large areas of Texas, it is now operating and there has been no violence or bloodshed?

A. I am not interested in Texas, only in Montgomery, here.

That is all.

THE COURT: Is there any reason to hold Mayor Gayle here any longer?

A. No, sir.

THE COURT: You may be excused, Mayor Gayle.

A. Thank you, sir.

MR. LANGFORD: We call Chief Ruppenthal.

G. J. RUPPENTHAL, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. LANGFORD:

Q. Will you state your name?

A. G. J. Ruppenthal.

Q. Will you give your occupation?

A. Chief of Police in Montgomery, Alabama.

Q. Will you tell us what your instructions are, if any, with respect to enforcing the segregations laws in the State of Alabama., on the busses?

A. I carry out the City ordinances.

Q. And you have issued instructions to your police officers to arrest persons who violate the segregation laws?

A. No, they carry out the City ordinances, also. In other words, Chapters 10 and 11, puts the responsibility on the bus drivers to arrange the segregation, and they have official instructions to have persons move back or to move up.

Q. Are your police officers and bus drivers empowered to arrest persons who refuse to move up or move back?

A. The City Code says they have the power and the responsibility.

Q. Since you have been Chief of Police, do you know of persons who have been arrested for violating the segregation laws?

A. Yes.

Q. Are these instructions current at the present time?

A. They have been in the City Code since 1938.

You are now enforcing it?

A. We have always enforced them.

Q. And you are instructed to enforce them in the future, is that correct?

A. Yes, that is correct.

That is all.

JUDGE RIVES: In reference to the City Ordinances, the Code of 1940, Code of Alabama, Section 1, says "Police of any incorporated City or Town have authority to make arrests for violation of the city statutes." You also have authority to make arrests for violation of the State statutes?

A. Yes, sir.

MR. KNABE: Have you ever made an arrest under the State statutes?

A. No, sir. They are all made under the City ordinances.

MR. LANGFORD: Do you know whether the persons who were arrested under the city ordinances were charged subsequently with a violation of the State laws?

A. They were charged with violation of the city ordinances.

Q. Do you know whether they were charged with a violation of the state laws?

MR. KNABE: Your Honor, again we ask that the records be introduced.

A. They were charged with the city ordinances.

That is all.

No further questions.

MR. GRAY: We did ask him to bring the records. Do you have those records with you?

A. Yes.

Q. We would like for that to be identified. All these records of the City

of Montgomery, in connection with these various arrests that have been made. We would like to have an opportunity of seeing these, with the view of putting them in the records.

A. These are photostatic records.

MR. GRAY: I would like to know if there are objections from the defendants to our introducing photostats in the record.

THE COURT: We will have a ten minute recess.

(After a ten-minute recess Court was reconvened.)

JUDGE RIVES: Is the plaintiff ready?

MR. GRAY: If it please the Court, we would like at this time to amend our complaint. Specifically paragraph 2-A, which reads:

"Further the enforcement, execution, operation of Title 48, Sec. 301, Sub-sec, 31A, 31B, and 31C, Code of Alabama, 1940 A.D. amended which requires the segregation of plaintiff and others because of race or color, from motor vehicle carrier, now operated in the City of Montgomery and the State of Alabama, denies to them their rights, privileges and immunities as citizens of the United States and the equal protection of laws, (and we would like to add,) and the due process of laws, as secured to them by the 14th Amendment to the Constitution of the United States.

THE COURT: Do you have that prepared?

A. No, sir. We don't have it prepared but that will be the substance of it. And the same thing in Paragraph B.

THE COURT: Will you be willing to consider that as so amended, with the complaint re-filed as so amended.

MR. KNABE: Yes, sir, with the added new material denied.

THE COURT: The Complaint will be considered as so amended and refiled. Later, however, you actually prepare the amendment to your copy.

MR. GRAY; The records in the Rosa Parks case, which was against the City of Montgomery, which has already been identified, we would like to introduce this copy into the records, with the understanding that we can get photostatic copies of it.

THE COURT: Is that the alternate copy you are introducing?

A. Yes, sir. We introduce that into evidence.

(Will be received in evidence and marked Plaintiff's Exhibit No. 1.)

MR. GRAY: We would also like to introduce into the records the evidence - the records, which were identified by the Police Commissioner, Mr. Ruppenthal, as the true copy of the records, as received by his office, with a reference to persons for the alleged violations of the city segregation laws. And the case of Claudette Colvin, vs, City of Montgomery,

THE COURT: All that is considered as one exhibit?

A. Yes, sir.

Q. That will be Plaintiff's Exhibit No. 2.

MR. GRAY: If agreeable with the defendant, we would just like to read into the record about half a page. The part of the testimony taken by the Solicitor in the City of Montgomery.

MR. KNABE: No objections.

MR. GRAY: (Reads:) I would like to read the following paragraph from the transcript of testimony in the case of the City of Montgomery, Vs. Miss Claudette Colvin. To the Circuit Court of Montgomery County, Alabama, in Equity. Case Number 28785. Appeal from the Juvenile Court of Montgomery

County, Alabama. Solicitor: There are three warrants here. In the Juvenile Court we have just consolidated the three and brought them here as one. They are all more or less a combination of the same circumstances; this is I understand with the consent of the defendants. In this case, I am perfectly willing to consolidate them all, if agreed; otherwise, we will try them one by one. Lawyer Gray, We would agree to the consolidation of the assault and battery and disorderly conduct charge, but we would like to try the violation of the segregation law charges. The Solicitor: Very well. We will try the assault and battery first."

That is all.

WILLIAM F. THETFORD, being called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

MR. GRAY

Q. State your name, please?

A. William F. Thetford.

Q. What is your occupation?

A. I am Circuit Solicitor of the Fifteenth Judicial Circuit of Alabama.

Q. Does that include the State of Alabama?

A. It does.

Q. In your official position are you sometimes called upon to represent the City of Montgomery, State of Alabama in trying juvenile cases?

A. Upon request of the juvenile court I do represent them.

Q. Were you so requested to act as presecutor in the case of the City of Montgomery, vs. Claudette Colvin?

A. I was.

Q. Do you remember in that case , Mr. Thetford, Claudette Colvin , was charged with violating the city segregation laws ?

A. That is right.

Q. And you amended the complaint before we took any testimony in the case ?

A. I have no distinct recollection of it.

Q. May I refresh your recollection , I give you a copy of what purports to be the record made by Mr. Hallowell in the juvenile court on March 18, 1955. And the style of the case is City of Montgomery versus Claudette Colvin. In this record on page 2 , it states this: William F. Thetford was the Solicitor for the State and did prosecute this case. I would like for you to read to the Court the paragraph which you are the Solicitor and see whether or not you can recall it.

to amend

If the Court please, I would like to offer/each of these warrants by which deleting the warrant / ~~it~~ can be amended at any time, I would like to amend it . It is 11506, The warrant charges as follows: Did fail to occupy the seat on a city bus assigned to her by the driver of said bus, which states this is violation of Chapter 6, Section 11, of the City Code. I would like to amend that by striking out a portion of it which states "in violation of," and substituting in lieu of that "in violating the Code of Alabama ,"1947, page 40.

Q. Do you remember making that ?

A. I don't have an independent recollection of it. I will say this, if the transcript says I did, I am sure I did.

Q. That is what confuses me. You do admit that.

A. It is in the transcript. I have no independent recollection of it.

Q. And the case did go to trial, as amended?

A. I am sure that it did.

Q. No further questions, your Honors.

MR. KNABE: Do you remember whether the case was appealed or not, to the higher court, the Appellate Court?

A. Yes, it was appealed to the Circuit Court and I represented the state in that.

Q. And then wasn't it appealed from there to the Appellate Court?

A. No. It did not go to the Appellate Court, it was tried, I believe, on assault and battery.

That is all.

Mr. LANGFORD: We agreed with Mr. Black, that the submission of certain evidence by the Alabama Public Service Commission was important. We would like to put it in evidence, if you will introduce that in evidence we will be agreeable.

MR. KNABE: We will put Mr. Owen on the stand and present it then.

MR. C. C. OWEN, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION:

Mr. Langford:

Q. Give us your name, please?

A. C. C. Owen.

Q. Your Nickname is Jack?

A. Yes.

Q. What position do you hold?

A. I am President of the Alabama Public Service Commission.

Q. Did you on or about April 24th send a telegram to the National City Bus Lines in Chicago and to other operators of bus companies in Alabama the telegram reading as follows: "As President of the Alabama Public Service Commission, elected by the people of Alabama, sworn to support the segregation laws of this State, which include all forms of public transportation I hereby defy ruling handed down by the United States Supreme Court ordering the desegregation of public carriers. Alabama State law requiring segregation in the city busses still stands. All public carriers in the State of Alabama, are hereby directed to strictly adhere to all presently existing segregation laws in our state, or suffer the consequences. Signed, C. C. (Jack) Owens. President of the Alabama Public Service Commission.

MR. KNABE: We object on the basis that that was something that came up after this suit was filed.

JUDGE RIVES: That suit which was filed was a suit in Equity. Of course, it would depend on matters at the time of rendering the decree. It would differ from that depending on the status at the time suit was filed.

MR. LANGFORD: We withdraw that question.

MR. OWENS: I sent that telegram to the President of the National City Lines in Chicago, Illinois.

Q. You sent a similar telegram to the other operators throughout the State, did you not?

A. Yes, I deleted the part referring to Montgomery. The telegram went

out to the other bus companies operating throughout the state.

Q. How many bus companies did you send it to?

A. All operating in the State, I have forgotten now.

Q. To every city and every town in the State?

A. We took it from the records we had and sent it to the busses operating under our jurisdiction.

Q. When were those telegrams sent?

A. April 24th, 1956.

Q. That is all.

CROSS EXAMINATION

MR. PATTERSON:

Q. Mr. Owens, these telegrams that you sent, did you send them after you had received word of the Supreme Court's decision in the Flemming case, in the newspapers?

A. Immediately after I got word on that, yes, I directed this telegram.

Q. Now, the action you took, in regard to the telegram was that the official action of the Public Service Commission or the action of you as an individual?

A. It was the action of me as an individual.

Q. By that you mean the other members of the Public Service Commission did not go in with you in the sending of that telegram?

A. That is correct. I signed that telegram myself.

Q. I believe the law you operate under in supervising and administering carriers in the State of Alabama, is known as the Motor Carriers Act, is it not?

A. Yes. That is correct.

Q. Does the Public Service Commission that you are president of, assume any jurisdiction in regulating or supervising the operation of carriers engaged in intra-city carrying of passengers?

A. They do on the Birmingham Transit Company.

Q. Is that the only city that you regulate or supervise the carrying of passengers in?

A. Yes, sir.

Q. That is Birmingham?

A. Yes, sir.

Q. Have you ever since you have been President of the Public Service Commission, has the Public Service Commission assumed any jurisdiction over the carrying of passengers by intra-city busses in the city of Montgomery?

A. No, sir.

Q. THE COURT: May I ask you, Mr. Owens, in that connection does the Montgomery City Lines hold any certificate of convenience or necessity of the Public Service Commission?

A. No, sir.

MR. PATTERSON: Mr. Owens, does the Company of Montgomery City Lines Incorporated, make any application to you to fix the rates that they charge on the City Busses here in Montgomery?

A. No, sir.

Q. Have they ever made any such application?

A. No, sir.

Q. You don't regulate their rates at all?

A. No, sir.

Q. Now, you have certain powers and jurisdiction over waiting rooms at terminals throughout the State of Alabama, under the Motor Carriers Act?

A. I'd say it is the ^{under} Code of Alabama. I don't know what particular sections it is under.

Q. Let me ask you this, does the Montgomery City Lines, Inc., one of the parties in this case, which operates in the City of Montgomery, do they have any terminals or any bus stations in the City of Montgomery?

A. You mean waiting rooms for the use of passengers.

Q. Yes, waiting rooms.

A. They have not.

Q. The Public Service Commission you say to your knowledge, they have never issued any orders in regard to the City Bus Lines, here in Montgomery?

A. No, sir.

Q. That is all.

THE COURT: Gentlemen, I want to call your attention to the 1945 Act reads this way: " All passenger stations in this State, operated by any motor transportation company, shall have separate waiting rooms, ^{or space,} and separate ticket windows for the white and colored races. ~~For~~ Such accommodations for the races shall be equal." All motor transportation companies or operators of vehicles carrying passengers for hire, in this State, whether intrastate or interstate companies, shall at all times provide equal but separate accommodations on each vehicle for the white and colored races. Conductors or agents of motor transportation company in charge of this transportation is authorized and required to assign each passenger to the position of the vehicle designated to the race to which the passenger belongs. And if the

passenger refuses to occupy the position for which he is assigned, the conductor or agent shall refuse to carry the passenger on the vehicle, and for such refusal neither the conductor, nor the agent of the motor transportation company nor the motor transportation company, shall be liable for any damages. Any motor transportation company or person violating the provisions of this section shall be guilty of misdemeanor and upon conviction shall be fined not more than \$500.00 for each offense, and each violation of this section, shall be administered and enforced by the Alabama Public Service Commission, in the manner in the provisions of the Alabama Motor Carriers Act of 1939." Mr. Owens, is it your construction of the words: "All transportation companies or operators of vehicles carrying passengers for hire in this state, whether intra-state or inter-state, as used in that Section, does not include common carriers such as busses in the City of Montgomery?"

A. That refers to the 1939 Motor Carriers Act, which does not put such companies as the Montgomery City Lines directly under our supervision.

THE COURT: This was passed after the 1939 Motor Carriers Act, I am just asking you what your construction of it is, you are testifying under oath, and I am asking what your construction of those words is. What your construction was, at the time you sent that telegram?

A. I had never thought of it in that particular line of thinking. This is the first time that point has ever been brought up. It seems to me like that means segregation as far as segregation is concerned.

MR. LANGFORD: In view of your answer to the question of the Attorney General, just what did you have in mind, when you sent this telegram to the Montgomery City bus line?

A. I am a firm believer in segregation, and not knowing whether or not this came under my jurisdiction, I was not going to take any chances.

Q. I understand at that point, that you did not know whether it was under your jurisdiction or not?

A. I was not positive. I had not seen the order, the Supreme Court order, in South Carolina..

Q. What did that have to do with whether or not the Montgomery City Lines were under your jurisdiction?

A. That didn't have anything to do with that, as far as I know.

Q. That had nothing to do with whether the Montgomery City lines were under your jurisdiction?

A. No.

Q. When you sent this telegram, as I read it, and as it is signed, you may look at your copy, you were sending the telegram as President of the Alabama Public Service Commission, were you not?

A. That is correct.

THE COURT: By saying you didn't send it in your official capacity, you mean you didn't have the approval of the other commissioners, is that right?

A. That is correct.

That is all.

MR. GRAY. Plaintiff rests.

MR. PATTERSON: We have no witnesses, we rest our case.

MR. KNABE: We have evidence, your Honor. We call Mr. Sellers.

MR. CLYDE SELLERS, being duly sworn, testified as follows:

DIRECT EXAMINATION:

MR. KNABE: You are Mr. Clyde Sellers?

A. Yes, sir.

Q. What is your position with the City of Montgomery, Mr. Sellers?

A. I am Commissioner of Public Affairs, have direct charge of the Police Department, and Fire Department.

Q. Mr. Sellers, were you present a few minutes ago when there was an examination of the Chief of Police of Montgomery?

A. Yes, sir.

Q. And was there a question asked as to orders that had been issued in reference to segregation?

A. Yes, sir.

Q. Do you have a copy of any order which has been issued?

A. Yes, sir.

Q. Will you read the order in reference to segregation which was issued by you?

A. Yes, sir. This was dated January 25, 1956. It is a memo from Commissioner Fire Chief to J. G. Ruppenthal, Police Department.

Subject: The negro boycott situation. This is the contents. "It is very important in the present situation arising from the bus boycott, that Police Department take steps to make certain no incidents arise to cause any additional trouble. I would like for you to stress, with all the men, that we are desirous of maintaining the best of peaceful relationships with the Negroes and that we want to be particularly careful that enforcement is carried out in a fair and impartial manner to all people regardless of their color or belief. I am perfectly aware that this has been our policy but because of the intense

✓ feeling arising out of this bad situation. It is very important that we emphasize this policy and make certain that it is carried out. I know I can depend on your cooperation and that of the men in this very important matter."

Signed : Clyde Sellers. And notations here on the bottom where each shift signed the notice and the time he read the notice.

Q. You mean it was read then to each shift and each shift had noted on there that it was read to them?

A. Yes, sir.

Q. Now, you referred in there to violence , had you been closely in contact with the situation between the two races since the bus boycott began?

A. Yes, sir.

2, Q Is it your opinion that if segregation is stopped what will be the situation that will prevail between the races?

A. I feel definitely that if segregation is done away with on the busses in the City of Montgomery, that violence would be the order of the day. I don't feel that we have enough police officers to take care of the situation, to prevent the violence that would be a menace to public safety.

Q. Do you feel that there would or would not be danger to public property and to the property of citizens of Montgomery?

A. Yes, sir. I do.

Q. Do you feel that there would be danger to the persons of various people here in Montgomery, both whites and colored?

A. Very definitely.

Q. That is all.

CROSS EXAMINATION:

MR. LANGFORD:

Q. Mr. Sellers, are you suggesting that violence would take place if segregation is declared unconstitutional for this city?

A. I am.

Q. And you said violence will take place.

A. Oh, no. I did not. I said it would.

Q. How do you know?

A. Well, if you were sitting in my position and listened to the phone calls and received the letters that I have received, not only from citizens of Montgomery but throughout the United States, you would know what would happen if segregation is done away with.

Q. In your official capacity here on the Police Department, would you put forth any effort to avoid violence?

A. Yes, every effort possible to try to avoid it.

Q. You don't think that integration would work in Montgomery?

A. I do not.

Q. Did you know that this building is not segregated?

A. Yes.

Q. Do you know of any violence going on?

A. Not in the presence of the Court.

Q. Do you know of any other areas where integration works?

A. No.

Q. Are you familiar with the army camps in the state?

A. No, I am not familiar with that.

Q. You know that they have integrated facilities.

A. I have heard that they have.

Q. Have you ever heard of any violence?

A. No. They are also under military control, which can prevent violence.

Q. You know people who work on military camps, don't you?

A. I do know.

Q. There is no violence there, is there?

A. No, but they work under strict military discipline, however.

Q. Are you familiar with Veteran's Hospital?

A. No.

Q. You don't know anything about them?

A. No.

Q. Did you know that as a matter of fact, there is no segregation in the Veterans Administration.

A. No. I don't know.

Q. Are you a veteran?

A. No, I am not.

Q. Do you know anything about the Post Office Building?

A. Very little.

Q. Have you seen any segregation in the United States Post Office Building?

A. No, I see both races walking down the aisles, like they were on the street.

Q. You don't hear of any violence there, do you?

A. No.

Q. Then why do you say there will be violence in the city.

A. I would think so. There is a very intense feeling.

Q. On both races?

A. Yes, in both races. As evidence by one of your witnesses who was up here awhile ago. The hate just went across her face as she answered the questions.

Q. But it is true that most people in Montgomery, both white and colored are considered peaceful?

A. We hope so.

Q. You don't know that we are bad citizens, do you?

A. Well, we make a number of arrests every day.

Q. You are a member of the Citizens Council, are you not?

A. I am.

Q. Did you join the Citizens Council in order to perpetuate segregation?

A. That is true. They are peaceful and legal men.

Q. Personally you are in favor of segregation, are you not?

A. Very much so, yes.

Q. Now, lets go back to the time of the boycott. What did you do, if anything, to avert that boycott? Or protest that situation.

A. What do you mean, what did I do.

Q. What did you do in your official capacity?

A. I think I did.

Q. What did you do?

A. We met and we carried out the laws of the City of Montgomery.

Q. At the time you met certain demands were made of you?

A. That is correct.

Q. One was that we receive more courteous treatment.

A. That is right.

Q. What did you do on that?

A. That they would receive courteous treatment. My feeling was this: That you receive the type of treatment that you give. If you are courteous to me, I am courteous to you. I try to be courteous to everyone, and I think the bus drivers are the same way.

Q. Now, on the other hand, about the Negro communities, what did you do on that?

A. We had nothing to do with that. That is not with the City Commissioners. We couldn't tell the Bus Company to hire any kind of drivers, white or colored. No more than we could tell any other business what type drivers to hire.

Q. Have you issued any other orders relative to segregation, other than what you have just read?

A. Recently, after the proposed Supreme Court decision with reference to South Carolina, I did.

Q. Let me ask you one further question. What was that?

A. After the bus company posted their notice that they were not continuing to enforce segregation on the busses, I issued to the Police Department an order, to continue to enforce the City Ordinances with reference to segregation, and they could take direct orders from me, because I did not feel that the decision of the Supreme Court had anything to do with the State of Alabama, that it referred only to the trial in South Carolina.

Q. And if the Supreme Court of the United States said segregation on the busses was unconstitutional, would you abide by that?

A I would have to, it would be the law of the land.

Q. And you would not defy it?

A. I would not.

Q. That is all.

REDIRECT EXAMINATION

MR. KNABE:

Q. You were present , I believe, when they first had that meeting? The Negroes with the City Commission, were you not?

A. Yes, sir.

Q. And at that time they stated that they had no arguments or no complaints against the City or the City Administration, did they not?

A. That is true.

Q. Now, he asked you whether you objected to having Negro drivers , as a matter of fact, you have Negro Policemen on your Police force, do you not?

A. We do.

Q. Is it not true that General Sparks and another prominent general had just published a statement that the presence of Negroes in the army seriously weakened the entire defense of the United States during the war. Have you seen that statement?

A. Yes, sir.

Q. No further questions.

MR. LANGFORD: Mr. Sellers, have you had any Negro Policemen , have you hired any?

A. No.

Q. Have you fired any?

A. One was dismissed.

Q. And the Negro Policemen who are on your force now, were hired when Mr. Birmingham was a City Commissioner, were they not?

A. Yes, that is right. Mr. Dave Birmingham hired them.

Q. That is all.

JUDGE LYNNE: GENTlemen, I may be anticipating the line of questions. I assume that Mr. Sellers will know the answer. I want to know how the segregation ordinance of the city was enforced, I mean, from a practical standpoint, as to seating arrangements; also something about the seating arrangements themselves, as to whether it makes no difference whether the seat was occupied by one race or another. How they entered the bus, and questions along that line. You may be prepared to show by another witness.

MR. KNABE: I did not intend to do that. The Bus Company themselves would be best.

MR KNABE: Mr. Sellers, was there any complaint that the Negroes got less than their share of the bus, or was it their complaint embodied only in the front position, so far as seating went, that they wanted to seat from front back and back to front.

A. Their request was that they be allowed to be first come, first served, Whites seating from the front to the rear and the colored from the rear to the front. If I remember correctly that was the gist of their request.

Q. And, the objection on the part of the City was that that might result in being an all Negro bus or an all white bus. And the position of the City was that there must be some space reserved for each race regardless, whether there were any on there or not?

ordinances of the City of Montgomery?

A. That is right, they did.

Q. Will you describe how the seating in your busses is arranged?

A. Well, we have different routes for the seating arrangements. Usually on the route that is predominately used by colored people, coming into town, they have over three-fourths of the bus. With only one-third in the front section, we have two side seats, and two cross seats, which is ten seats we reserve for white passengers, on these particular busses.

Q. Is that reserved on all busses?

A. No, sir. We have some lines that are different. This is the only particular that this dead-line is drawn. Because it is the only line where you will have the biggest part of the bus that will be taken by the colored passengers.

Q. On the other lines, the number of colored passengers is insufficient to require that reservation?

A. Yes, sir.

Q. Are there signs in the busses?

A. Yes, sir. We have signs in the busses, placed up over the seats of the busses.

Q. What does the sign say?

A. It has an arrow pointing to the rear for the colored, and an arrow pointing the whites to the front.

Q. Are those so-called dead-lines you speak of, or are the signs in general in the middle of the bus?

A. These signs are posted all along in the bus.

Q. Now, when a passenger boards the bus, which door does he respectively

board?

A. All passengers come in at the front door. We have some passengers that comes up to the front door that have packages and others , and then when you get so far up the line we have occasions where you ask them to move back and give room for others passengers that block the door. If you permit them to go in at the rear door you can carry passengers who would have to leave by not getting the cooperation out of those who were first to get on. There are very few instances where they are loaded in the rear.

Q. That is both the colored and white ?

A. Yes.

Q. Is there any difference between the seats provided for the white person and for the colored person ?

A. No, sir, except for location.

Q. Now, you have the reserved seating arrangement only on a few of the lines ?

A. Well, we have just one line that is Washington Park and South Jackson which covers both ends of the colored area. Most all the other lines that operates , in the white section the riding habits are different. On these two particular lines we do have mostly colored passengers riding, still we come through the white section of town to get to town.

Q. And what proportion of your riders normally consisted of , by normally I mean before December 5, 1955, normally consisted of colored passengers and what proportion of white passengers ?

A. I imagine about 65 or 70% are colored passengers.

Q. And what are the present proportions ?

A. Well, we are having around three or four hundred a day.

Q. Compared with how many before?

A. I imagine around thirty or forty thousand.

Q. In view of the proportions, you have described certain of your runs as predominantly colored, what proportion of passengers/are those that are/pre-
on those runs not
dominantly colored, be colored and white.

A. Well, we have a bus that comes from the West side of town, it would usually come from a section that is heavily colored, before we would get to town we would go into a section of nothing but whites, therefore coming from the west side of town into town, we would have over three -fourths of colored, all the seats would be taken by colored people, and then when we start on the other end we would pick up the white passengers.

Q. Isn't it true on all of your lines, no matter where they run in the city, a substantial proportion of passengers would be colored?

A. That is right.

Q. What proportion?

A. At least seventy percent.

Q. That couldn't be if only 65% were colored. In certain lines it might be 90%?

A. I guess so.

Q. What was the lowest?

A. Of white or colored?

Q. The lowest proportion of colored people?

A. That would be hard to break down because of the fact that different ones were going in each direction, that would be hard to say.

Q. It would vary at different points ?

A. That is right.

MR. THRUN: Is that clear , your Honor ? Have we covered the things in which you were interested ?

THE COURT:

Q. I am not clear as to whether it was all lines or simply part of this one line you have discussed.

Q. Mr. Mills, could you clarify that ?

A. Judge, that was the line that particularly served mostly the colored areas. That is the only line we set a dead-line on. The drivers let nobody beyond these ten seats. Regardless how many whites, unless there were vacant seats on this particular line , we would never ask them to get up and move. If there were vacant seats , we would try to keep them separated, especially on this line. Now you take a line that comes out of the white section, there would be only about ten seats that would be saved for the colored people in the rear.

THE COURT:

Q. On the line you do separate the whites from the colored people ?

A. That is right.

Q. How do you mark the separation ?

A. Well, usually we have the signs up , and the whites and colored people separate themselves without the driver asking them. There are signs over each seat , if the operator is a mind to , on each seat as you go back, move the closed and open signs as he went along.

Q You have one movable sign ?

A. No, sir. They are folding signs.

Q. What happens on that bus , on which there is a so-called dead-line. I believe you say there are seats

believe you say there are seats for ten white people and what if five more get on? What happens to them?

A. They stand.

Q. And suppose the other seats are full of colored people but they are four empty white seats, what happens to the colored people?

A. They stand up.

Q. Now, from a practical standpoint you say there are no fixed laws, except on one route.

A. That is right.

Q. To designate this is the colored section, and this is the white section apart from the arrows indicating front and rear? Suppose you have a situation in which the bus is full, on a rainy afternoon, and both colored and white get on and all the seats are full, what do they do?

A. On this particular line they stand in the aisles.

Q. I am not talking about this particular line, I mean on any line?

A. You have the colored people loaded up as far as you can, and you allow your white passengers to load as far back to the rear as you can.

Q. The point I am getting at, it is rather obvious, you say, both white and colored have to stand if there are not seats available to them?

A. That is right.

Q. In practically enforcing the segregation ordinances, you do not require colored people to get up and give their seats to standing white people in a bus where there is no dead-line? If they are seated they get to keep their seats?

A. Well, that all depends. We have asked them to get up out of their seats. This is mostly to keep them separated.

Q. I am assuming a situation from rear to front, all seats are filled by colored people up to a certain point, from that point to the front is filled by white people, what if a white passenger gets on the bus, and I am asking you whether under your practice, you would then require, assuming that all seats are filled from the rear by colored people, whether you ask the colored people to get up and give the white person their seat?

A. That is not our practice.

Q. That is not your instructions?

A. No, sir.

Q. Is there anything about the division of the white and colored passengers on a bus that suggests itself to you, that we have not asked you about?

A. Not in the operation of it.

Q. There is no difference of any kind in the seats themselves? As to springs underneath the vehicle as to where people sit?

A. All seats are the same and all springs are the same.

Q. They are just as comfortable for the whites as they are for the colored?

A. Yes.

Q. When you do load in the rear door, you say you do that for accommodation only?

A. That is right. We have a lot of cases for the lack of cooperation, of the passengers white and colored, you will have to do that, in other words, you come from the white section out here, and you will have white people standing, are in the aisle, the chances/we still have room for 8 or 10 colored people, passengers in the rear, therefore, we permit our drivers to let them in at the rear door to keep from passing them up.

That is all.

MR. PATTERSON:

Q. W. HALE: How many lines do you operate Mr. Mills?

A. Fourteen, lines.

Q. Fourteen?

A. Fourteen different lines.

Q. About how many busses do you have operating in the entire city?

A. We ^{have} six or seven busses.

Q. On this line that hauls principally colored passengers, how many busses on that line?

A. We have had a s high as fourteen on it. We have had them as close as fite fifteen minutes apart, during the rush period.

Q. You try to provide adequate number of busses for each of the lines in the city?

A. That is right. It all depends on whether the riding trend , for how many busses are put on.

Q. And normally white and colored passengers both come in at the same door of the bus?

A. That is right.

Q. Do you know what percentage of colored passengers those 14 busses carry on that particular route?

A. That is the heaviest line that we have on account of the colored State Teacher's College there side and the Washington Park area, that is the heaviest in a day's run it will haul over half of the colored passengers that will ride.

That is all.

MR. KNABE:

Q. As a matter of fact, Mr. Mills, there are times when some busses are almost entirely filled with Negro passengers?

A. That is right.

Q. And there are times when white people are standing and Negroes are seated and no Negroes are standing, is that correct?

A. That is right. It works both ways.

Q. Now, in reference to your enforcement, you have always, when there has been any problem in reference to segregation you have handled that through the City, is that correct?

A. That is right. We instruct our drivers to try to handle it himself, and then if he can't handle the passenger to call the police.

Q. In other words any complaint they have ever made they have always been to the City of Montgomery, or the police department.

A. That is right.

Q. Have you ever at any time made any complaint to the State of Alabama, or to Mr. Thetford's office?

A. No, sir. Not to my knowledge.

Q. JUDGE LYNNE: There is one question I did want clarified. I believe you say that at the present you have about 300 colored people daily, as against between 30,000 and 40,000 before this incident arose, now are you talking about separate fares or people?

A. That is the people. That is before the boycott we were operating around 62 busses and we could haul around 30 to 40,000 colored people a day.

Q. Now, you figure a person is a passenger every time he pays his fare?

A. That is right.

Q. If a colored person rode three times he would be number as three people?

A. That is right.

Q. That is all.

CROSS EXAMINATION

MR. GRAY:

Q. Mr. Mills, you do instruct your drivers to segregate your passengers according to race?

A. We instruct them to abide by the law.

Q. Both the city law and the state law?

A. Yes, all laws.

Q. Isn't it a fact, Mr. Mills, that under no circumstances can a negro occupy the first ten seats on any bus in the City of Montgomery?

A. No, they have on some routes been able to take these seats, because on some of the lines that I have just mentioned, we have had busses that are marked special where they have all the seats.

Q. When the busses are marked "Special" there are no white people at all on it. But on the regular busses that are not marked "Special" then under no circumstances can a Negro sit in the first ten seats?

A. That is right. That applies to the rear too,

Q. You stated, I think, that your policy is not to request the driver to ask any Negroes to get up and give white people seats. If all the other seats are available, is that correct?

That is right.

Q. But you do know, of your own knowledge, where so many drivers have requested Negroes to get up from their seats and stand so the white people can sit, don't you?

A. In some cases, I do.

Q. Isn't that particularly true in Claudette Colvin's case.

A. I wouldn't say.

Q. But you do know in some cases ?

A. To the best of my recollection , at the time that he asked her to move, that there was a seat back there , a vacant seat. for her.

Q. I have a record , your Honor, I can submit it and show where the driver has admitted there were no seats.

THE COURT: You may introduce in evidence the record if you wish.

Q. You do admit that there are situations that drivers have requested girls to stand so white people could be seated. don't you?

A. I will say this, we never have had many complaints as to that happening.

Q. Suppose a Negro would get on the bus and all the seats were taken but one seat, and that seat is by a white person, could he occupy that seat?

A. Not by the law.

Q. If he occupies that seat, he would be requested to get up?

A. That is right.

Q. That is all.

MR. KNABE.

Q. As a matter of fact there have been cases where white people have been asked to move their seats in order to make room for Negroes , is that not correct?

A. Our records show that we have asked more white people to give up seats than we have colored people. In fact our records show we have had more objections of white persons than we have of colored, for failing to comply with that.

Q. In other words more white passengers have objected that they have been , were not getting their share of space than the Negroes have, is that right?

A. Yes, sir.

MR. GRAY: You mean you have had more complaints on white people than you have from Negroes ?

A. No, we have more white people ejected because they refuse to abide by the driver's instructions , about separating the races .

Q. Isn't it a fact that in most instances Negroes voluntarily get up without calling the Police ?

A. I would say over 80% .

Nothing further.

THE COURT: We will come back after lunch and have the arguments.

After lunch recess the attorneys summed up to the court.

THE COURT: Well, wound up on time. Thank you for some very good arguments on the case, and these briefs. The Court is going to study the case , we will take it under consideration. When a decision is rendered you will be notified.

I, Ethel M. Schneider, Official Court Reporter, United States District Court, Middle District of Alabama, do hereby certify that the foregoing transcript of testimony, pages 1 through 69, inclusive, contains a full, true, and complete transcript of testimony as taken by me in said case, to the best of my ability.

This the 11th day of May, 1956.

Ethel M. Schneider

Ethel M. Schneider,
Official Court Reporter,
Middle District of Alabama,
U. S. District Court.

This page was located and sent to Mrs. Gordon on 4-8-81 by certified mail. M.A. Perkins

United States District Court

MIDDLE DISTRICT OF ALABAMA
OFFICE OF THE CLERK
POST OFFICE BOX 711
MONTGOMERY, ALABAMA 36101

MRS. JANE P. GORDON
CLERK

August 15, 1978

Director
Federal Records Center
1557 St. Joseph Avenue
East Point, Georgia 30344

Re: Aurelia S. Browder, et al. v.
W. A. Gayle, et al.
Civil Action No. 1147-N, Middle
District of Alabama

Accession No. 67A893, FARC Box
No. 449934 (formerly 426114)

Dear Sir:

Inasmuch as the file folder this case was in had become torn and fragile, I have replaced it in a new folder and have also put the court reporter's transcript that is a part of the file in a pressboard binder. The file, including said transcript, is returned herewith. Please acknowledge receipt. *and an envelope of exhibits.*

why? see note above.

When this file was retired to the Records Center, it contained the original of the opinion of June 5, 1956, signed by Judges Richard T. Rives and Frank M. Johnson, Jr. When we received the file from you this time, I discovered that the signature page of this opinion was gone. I had a photocopy of it in the records in this office, and I have placed in the file a photocopy of the opinion, keeping what is left of the original here. This file has been transmitted back and forth between us so many times that, at this point, I do not know of any way to tell when the signature page was removed. However, I do think that any inadvertent removal here, such as its being left on the copying machine, would have been discovered, and it would have been replaced. Have members of the public examined the file at the Records Center, and have copies of the opinion been made there? In other words, is there any way you can check to see if this page was removed from the file at the Records Center?

Sincerely yours,

Jane P. Gordon
Jane P. Gordon

Enclosures

U.S. District Court for the
Middle District of Alabama

Browder vs. Gayle, Civil Action

No. 1147-N

Court Reporter's Transcript of
Hearing held May 11, 1956

(FARC 449 934)

(Accession No. 67A.893, Box No. 42014)

YOUTH FREED IN 'BOYCOTT' CASE

PLAINT'S EXH.

DATE

5/11/56

JAN. 12/7/55

Negro Minister Denies Effort To End Segregation On Buses

A Negro youth was acquitted in Recorder's Court today on a charge of attempting to pull a Negro woman off a boycotted City Lines Bus, and a Negro minister later said during an interview, "We are not asking an end to segregation."

Rev. M. L. King, pastor of the Dexter Avenue Baptist Church, made the statement following the acquittal of Fred Daniel, 19, of 1646 Hall St., who appeared before Judge John B. Scott on a disorderly conduct charge.

PATROLMAN TESTIFIES

Patrolman Ralph Hammonds, behind the South Jackson bus early Monday along with his partner, C. A. Weaver, testified he saw a Negro woman about 50 years old "running to catch the bus" at the intersection of Thurman and Jackson Streets.

"This boy grabbed her arm and manually pulled her off," Hammonds said. "We placed him under arrest and the woman said, 'He's my color — I'll take care of him.'"

Negro Atty. Fred D. Gray, who represented Daniel, asked Hammonds if he got the name and address of the woman. Hammonds said he didn't.

Gray then introduced Leva G. Percival, 1506 S. Hall St., and asked Hammonds if she was the woman alleged to have been pulled off the bus. The officer said she looked like the one.

Leva Percival then took the stand and testified, "I was not about to catch the bus. I was going to the store on the corner of Thurman and Hall. All I had on was a gown with a coat thrown over it."

STORY CORROBORATED

The woman further corroborated

Daniel's story that he was merely "escorting" her across the street.

The Percival woman also denied Hammonds' quote concerning, "He's my color."

"I didn't say that," she declared. "I said, 'I'm not getting on this bus and he hasn't done nothing wrong.'"

NOT ASKING END

The charge was dismissed.

Later, during an interview in Gray's law office, Rev. King had this to say about the boycott which is now well into its third day:

"We are not asking an end to segregation. That's a matter for the Legislature and the courts. We feel that we have a plan within the law. All we are seeking is justice and fair treatment in riding the buses. We don't like the idea of Negroes having to stand when there are vacant seats. We are demanding justice on that point."

Rev. King said the boycott group was ready to meet with bus line officials "any time we get an invitation."

The boycott will continue, he said, "Until we gain concrete results."

NEW DRIVER CONTRACT

J. H. Bagley, manager of the Montgomery City Lines Bus Co., announced last night his company had agreed upon a new two-year contract with the union representing the city bus drivers, thus advertising any possibility of a pre-Christmas strike. The contract is expected to be signed this week.

Bagley said today the boycott was "holding its own" with the drop in Negro passengers staying around the 85 per cent level. He also said there was nothing to a

rumor that several of the buses this morning were "unsegregated."

"It was just like it always was," he said. "I don't know how that got started."

PAY HIKE IN PART

Under the terms of the new bus company and union contract, Bagley said bus drivers will average between \$350 to \$360 per month. The new contract, calls for a 4-cent hourly increase for the first six months of the contract, 3 cents an hour for the remaining 10 months of the contract.

The Negro bus boycott grew out of the arrest and conviction of Rosa Parks, a 42-year-old Negro seamstress who was fined \$14 for failing to move to a Jim Crow seat on a city bus in violation of a state segregation law.

Bagley declined to make an estimate of the decrease in company receipts as a result of the boycott. He did say that Negroes comprised some 70 per cent of the normal trade and that business normally falls off some 15 to 20 per cent on bad, rainy days. On such days, the drop in receipts runs from \$600 to \$800, he said.

AIR RIFLE PELLETS HIT BUS

Meanwhile, police said two air rifle pellets struck a glass and the side of a bus traveling east on Mill Street just west of Cleveland Avenue yesterday.

Bus driver W. D. Bates told officers the bus was empty at the time and that he was unharmed.

Later, bus driver J. B. Gardner reported his bus was stoned twice at the intersection of Union and Columbus Streets, once at 8:50 p.m. when a rock broke a rear window and again about 10:10 p.m. when a side glass was broken by thrown

rocks. No one was hurt.

Bagley reiterated the statement of the bus company's attorney, Jack Crenshaw, that the Negroes should seek to meet with city officials and not wait for an "invitation."

"If they don't like the law we have to operate under," Crenshaw said earlier, "then they should try to get the law changed, not engage in an attack upon the company."

Police Report, 1955

Police officers arrested Rosa Parks and took her to the police station where she was charged with “refusing to obey orders of bus driver.”

Misc

POLICE DEPARTMENT
CITY OF MONTGOMERY

Date 12-1-55 19

Complainant J.F. Blake (wm)

Address 27 No. Lewis St. Phone No.

Offense Misc. Reported By Same as above

Address Phone No.

Date and Time Offense Committed 12-1-55 6:06 pm

Place of Occurrence In Front of Empire Theatre (On Montgomery Street)

Person or Property Attacked

How Attacked

Person Wanted

Value of Property Stolen Value Recovered

Details of Complaint (list, describe and give value of property stolen)

We received a call upon arrival the bus operator said he had a colored female sitting in the white section of the bus, and would not move back.

We (Day & Mixon) also saw her.

The bus operator signed a warrant for her. Rosa Parks, (cf) 634 Cleveland Court.

Rosa Parks (cf) was charged with chapter 6 section 11 of the Montgomery City Code.

Warrant #114254

- THIS OFFENSE IS DECLARED:
- UNFOUNDED
- CLEARED BY ARREST
- EXCEPTIONALLY CLEARED
- INACTIVE (NOT CLEARED)

Officers F. B. Day
D. W. Mixon

Division Patrol Time 7:00 pm

12-1-55

Name Parks Rosa L. Classification 28 MO 72
Surname Given Name Middle Name

28 MI

Alias _____

Nickname: _____ Reference _____

No. 79521 Color C. Sex Female

79521

RIGHT HAND

1. Thumb	2. Index finger <u>m</u>	3. Middle finger <u>0</u>	4. Ring finger	5. Little finger <u>✓</u>
				

LEFT HAND

6. Thumb	7. Index finger <u>m</u>	8. Middle finger <u>I</u>	9. Ring finger	10. Little finger
				

Impressions taken by

Mary Cannon

(Signature of official taking prints)

Note amputations

Signature of person fingerprinted:

Files searched by _____

ROSA L. PARKS x Rosa L. Parks

Four fingers taken simultaneously

Four fingers taken simultaneously

Left Hand

Left thumb

Right thumb

Right Hand

