Rosa Parks:
A Salute to a “Shero” Who Was Bigger than Life

BY IRVING JOYNER

In 2006, it is difficult for many people to imagine that an African-American could be killed for the minor indiscretion of drinking from a “white only” water fountain within the United States or be subject to lynching for merely looking a white person in the eyes or for challenging any of his or her socially accepted rights. What is difficult to imagine today was an entrenched part of life’s realities for African-Americans during the 1950s and 1960s. The history of race relations in America, particularly in the South, shows that thousands of African-Americans were killed or severely injured for what can best be described today as social slights.

In 1955, it was widely known that African-Americans were not to challenge the South’s rigid code of racial segregation, which required that all African-Americans know and keep their place in society. This meant sitting in the balcony at the movies or “picture-show houses,” using bathrooms designated for “colored only,” and drinking only from designated “colored” water fountains. These were a few of the requirements imposed upon African-Americans in public places, although many of the whites who inflicted these rules operated from a different segregationist code at night when they regularly engaged in sexual interactions with African-American women. Indiscretions committed by African-Americans in public often resulted in serious injury or death, and African-Americans were keenly aware of these probabilities.

Into this breach in Montgomery, Alabama, on March 2, 1955, stepped 15-year-old Claudette Colvin, who dared to challenge a pernicious system of racial segregation requiring African-Americans to sit in the back of public buses and to give up their seats if a white person got on the bus and no seats were available. This requirement was codified in Alabama law and subjected the offender to jail or a hefty fine. The Alabama law provided:

Title 48, § 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...
Hamdan a Triumph of Justice

By Edward B. Adams Jr., Manotti L. Jenkins, and Paul L. McDonald

CoHairs of the Minority Trial Lawyer Committee

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Two of the American Bar Association's core mission goals are to promote respect for the law and justice. In the past few years, the actions of the executive branch of our government have been troubling for many lawyers who felt that the president's actions were antithetical to those goals. In pursuing those who wish to harm America, the president and the Justice Department made the determination that some people were not entitled to certain aspects of justice that we often take for granted. Specifically, for the past several years individuals detained at Guantanamo Bay were denied many of those rights. That is, the executive branch had said that the detainees were not entitled to lawyers or even access to courts. The Supreme Court struck down those decisions in Hamdi v. Rumsfeld and Rasul v. Bush. In those cases, the Court found that both foreign nationals and U.S. citizens could challenge the conditions of their confinement through a hearing.

Later, the executive branch said that if hearings must be held, they will be conducted in a manner the president set independently without regard to the legislative or judicial branch. Again, the Supreme Court said no, ruling in Hamdan v. Rumsfeld that the president cannot unilaterally determine the nature of the proceedings in which a person challenges his detention.

As lawyers, the notion that someone would be denied access to counsel or the courts is troubling. What many believe makes this country great is the notion that we have certain rights that when violated, no matter by whom, can be redressed in a court of law. As many minority trial lawyers know all too well, that aspiration has not always been met. Too often, because of lack of financial resources, language barriers, and racism, people have been unable to even seek justice in America's courts.

Given that mixed history, whatever one's thought of the outcome, the Supreme Court's recent ruling in Hamdan—the notion that a foreign national, who admitted to being Osama bin Laden's driver and whom the Court "assumed... was a dangerous individual whose beliefs, if acted upon, would cause great harm and even death to innocent civilians and would act upon those beliefs if given the opportunity"—could sue the secretary of defense is heartening. That Hamdan could win such a suit in the nation's highest court is a testament to our country's notions of justice and respect for the law.

In this issue of the Minority Trial Lawyer, the Honorable Janice R. Brown reviews Michael J. Klarman's From Jim Crow to Civil Rights—The Supreme Court and the Struggle for Racial Equality. Judge Brown looks at Mr. Klarman's theory that courts and the Supreme Court do not blaze new trials in law, but rather constitutionalizes consensus and suppress outliers. Judge Brown examines whether, as Mr. Klarman posits, "the romantic image of the court... . rescuing from oppression 'the helpless, weak... or... nonconforming victims of prejudice' is probably unrealistic." One wonders what Mr. Hamdan and Mr. Hamdi would think.

Irving Joyner writes a remembrance of Rosa Parks and the lesser known Claudette Colvin, whose courage showed a nation that one need not wait for a court's imprimatur in order to effect large social change. Professor Joyner discusses Ms. Colvin's and Ms.

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The Constitutional Career of Jim Crow

By Michael J. Klarman

Between the end of Reconstruction and the Civil Rights Act of 1964, the language, images, and national understanding of civil rights—of the meaning of justice and equality—were reinvented. What Michael Klarman demonstrates in his decade-by-decade survey of the legal landscape from the post-Reconstruction indifference of the Plessy era to the post-Brown radicalization of Southern politics is that Brown, which looks on its surface like a transformative moment compelled by an unbiased application of constitutional principles, is the product of a decades-long struggle that took place largely outside the courts.

Klarman’s thesis seems at odds with the current prevailing view of the Supreme Court as the source of the country’s “very ability to see itself through its constitutional ideals,” Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 868 (1992), an oracle clarifying the “country’s understanding of itself as a constitutional Republic,” id. at 865. Of course, Klarman is looking back to a time when the role of courts and judges—in reality and in public perception—was more constrained.

At times, Klarman’s dispassionate catalog of atrocities is painful. For example, he discusses the way in which extralegal violence, particularly lynching, was employed by white supremacists to stifle dissent. Although hundreds of people were victimized, these acts of domestic terrorism were tolerated for decades without a word of censure from the president or Congress. Antilynching legislation failed repeatedly, and presidential candidates refused to utter even a mild condemnation of this obvious evil.

When the Court finally began reversing convictions in mob-dominated trials where black defendants had been deprived of any vestige of due process, Southern whites protested that the relevant comparison was to lawless lynchings, not to court proceedings with all the finery of due process. “The function of trials in such cases was less to establish guilt or innocence than to forestall lynching,” writes Klarman, who then concludes that state court judges and Supreme Court Justices applied different paradigms. “State judges viewed any trial, regardless of how defective its procedures, as an improvement over lynching, while [Supreme Court] justices thought criminal trials should determine guilt or innocence, not just substitute for lynching.”

Klarman insists the many factors responsible for the fundamental changes in racial attitudes and practices in this country cannot be ranked in terms of importance because “history is not science,” he acknowledges that the greater militancy of blacks as a result of World War II played a profoundly significant role, and he deems the “importance of the Cold War imperative for racial change” difficult to overstate. “In the ideological contest with communism, U.S. Democracy was on trial, and Southern white supremacy was its greatest vulnerability. . . . The Soviet Union capitalized on American racial atroci-
ties to trumpet the deficiencies of democratic capitalism.”

World War II, like the Civil War, forced Americans to consider the gap between rhetoric and reality. Even so, “black militancy and the concessions it elicited” generated a backlash among Southern whites, an increase in Lynchings, and warnings of racial holocaust even from moderates. Klarman neatly captures this ambivalence, reporting Walter White’s acid observation that “the highest casualty rate of the war seems to be that of Southern white liberals.”

The book is leavened with such quotes and anecdotes, and though it provides an exhaustive survey of one of our country’s worst epochs, it is not a paean to victimization. It is a story of resilience and emotional intelligence. There are funny or poignant moments on every page. Because of his training as a historian, Klarman provides a depth and richness of detail that bring long-ago events back to life. For those who lived through these events, the scenes are vivid enough to conjure the smell of rain dust from those distant summers. For those who have a historical interest, the book is a ringside seat.

This is a remarkable book for its breadth, depth, and clear-eyed attitude. We need to be reminded of our long and dark and terrible history—not to wallow in it, but to see how far we have come and how much fortitude it took. We do a grave disservice to the real heroes of the past and damage our ability to see the future clearly by acting as if Brown v. Board was all there was to it.

In fact, Klarman argues persuasively that Brown was not just Brown. In his view, the Court’s decision in Brown II to support gradual implementation of desegregation propelled the civil rights movement from litigation to the direct action of sit-ins and freedom marches. Moreover, the Brown decision radicalized Southern politics in a manner not seen since the days of Reconstruction, as voters elected candidates who took the most extreme positions. It was, Klarman says, “the brutality of Southern whites resisting desegregation that ultimately rallied national opinion behind the enforcement of Brown and the enactment of civil rights legislation.” Thus, Brown’s near iconic status may be the indirect result of the discord it spawned, as Klarman explained in a 1994 law review article:

The crucial link between Brown and the mid-1960s civil rights legislation inheres in . . . the decision’s crystallizing effect on Southern white resistance to racial change. By propelling Southern politics dramatically to the right on racial issues, Brown created a political climate conducive to the brutal suppression of civil rights demonstrations. When such violence occurred, and was . . . transmitted through the medium of television to national audiences, previously indifferent Northern whites were aroused from their apathy, leading to demands for national civil rights legislation which the Kennedy and Johnson administrations no longer deemed it politically expedient to resist.

For the younger generation of lawyers, the Warren Court and Brown have become part of legal lore. To lawyers entering the profession in the 1960s, Brown meant they would have the opportunity and the obligation to build a better society by relying on courageous and compassionate courts to do what legislatures were reluctant to tackle. And that idea, surprisingly persistent, still echoes today.

It is not necessary to agree with Klarman’s premises to find valuable insights in his book. It is good to keep always in view what a complex, organic, and mysterious thing a society really is, and to understand how easily the good can be silenced. Massive Resistance, like Jim Crow before it, succeeded because “the South was not an open society characterized by robust debate on racial issues.”

During this period, the First Amendment was endangered in the South, where dissenters were, in editor Hudding Carter’s words, “immobilized by confusion and fear.” The suppression of unpopular speech is often justified by the alleged need to protect and preserve the correct way of thinking, as illustrated by the explanation of the chairman of the Georgia School Board that banned textbook statements charging whites with discrimination against blacks: “There is no place in Georgia schools at any time for anything that disagrees with our way of life.”

Klarman concludes that while court decisions matter, and Brown was one of the most significant, they cannot “fundamentally transform a nation.” He finds that Supreme Court Justices are “too much the product of their time and place to launch social revolutions.” But this view is based on the world before Brown. In the years since Brown, and partly as a result of the lore that grew up around it, the way people think about judges and the role of the judiciary has changed. Perhaps the task for Klarman’s next book, chronicling the 50 years after Brown, will be to see how society fares when judges come of age in a “time and place” where they are expected to “launch social revolutions.”

Janice Rogers Brown is a judge on the United States Court of Appeals for the District of Columbia Circuit.

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**Chairs’ Column**

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For the younger lawyers, Aron Levko provides excellent tips for presenting expert testimony. Mr. Levko sets out 12 precepts that will help young lawyers and more experienced practitioners ensure that the expert testimony comes across in an understandable, crisp, presentation that a jury or judge can understand.

Finally, Paul McDonald, one of the chairs of the Minority Trial Lawyer Committee, writes about the goals of the committee, the new subcommittee structure and how to get involved with the group. We hope that you will take us up on the offer to get more involved in your committee.
Help Wanted! Our Committee Has Big Dreams
Help Us Make Them Reality

BY P A U L  L. M C D O N A L D

The Minority Trial Lawyer Committee cochairs are in the process of rolling out a new agenda and subcommittee structure and a redesigned website to better serve current members and attract new members. Our goals are to raise the Committee’s profile as both a practice resource for litigation tips and business development strategies to support the career success of minority attorneys, as well as a contributor to minority communities by facilitating discussion of the impact of race on the law, and vice versa, addressing issues of racial bias in the courts and the profession at large, and promoting programs to prepare minority students—from high school to law school—for careers in the law.

The Committee’s new agenda incorporates items discussed among the cochairs and members during recent business meetings at the Committee on Corporate Counsel Litigation CLE Seminar in Carlsbad, California, and the Section of Litigation Annual Conference in Los Angeles. We greatly appreciate the input, energy, and commitment of the members who attended those business meetings and who have responded so far to the cochairs’ May 2006 letter to the Committee membership. But we need more—from current members and new recruits—to transform our big dreams into reality.

New Agenda and Subcommittee Structure
The Business Development Subcommittee supports the career success of minority trial lawyers. Cochair Paul McDonald has begun contacting corporate signatories of Sara Lee General Counsel Roderick Palmore’s “Call to Action: Diversity in the Legal Profession” and corporate members of the Minority Corporate Counsel Association to request statements and materials related to the corporate law department’s diversity expectations of outside counsel, including, for example, diversity criteria related to requests for proposals and evaluation of retained counsel, to be posted on the Committee’s website. At the same time, Paul McDonald is gauging corporate law department interest in hosting CLEs at or near offices of law departments and featuring minority in-house and outside counsel as faculty on current litigation issues affecting the related industry. The ABA Products Liability Committee has had great success with similar CLEs—most recently with the CLE, “Current Issues in Medical Device Litigation,” held at Alcon Laboratories in Ft. Worth, Texas, on June 15.

Our goals include exploring the impact of race on the law and issues of racial bias in the courts and the profession at large.

Current projects of the Business Development Subcommittee also include developing a Minority Trial Lawyer Speakers/Writers Bureau (Opt-In Membership Benefit) to better promote Committee members for speaking and writing opportunities within the ABA and to other groups by identifying and maintaining contacts with persons responsible for planning conferences and panels, and with editorial boards, and providing such persons with easier access to relevant information on minority trial attorneys who “opt-in” to the Bureau. To facilitate business referrals among Committee members, we are also exploring means to support a Minority Trial Lawyer Referral Network (“Opt-In” Membership Benefit), using secure, “opt-in” e-mail groups to allow Committee members to send requests for counsel to a broad distribution list—or distribution list limited by criteria, such as practice area or region.

The Membership Subcommittee aims to increase networking opportunities among current and prospective members by hosting city and regional events and receptions. Importantly, as attendees of recent business meetings at Section of Litigation CLEs were predominantly African-American, this subcommittee will be tasked with outreach to increase representation of other racial groups within the Committee.

The Minority Law Firm Subcommittee supports Committee members’ minority-owned law firms by working with organizations such as the National Minority Law Group and National Association of Minority and Women Owned Law Firms to assist such firms in developing and maintaining business relationships with corporate law departments. This subcommittee will also continue to explore the topic of the first plenary session at the recent Committee on Corporate Counsel Litigation CLE Seminar, “Might Plus Right: Partnering Big and Small Firms for Diversity,” facilitating strategic partnerships between minority-owned and “majority” law firms.

The Newsletter Subcommittee produces the Minority Trial Lawyer, a quarterly publication, a benefit of committee membership and a showcase for minority lawyer authors, features articles covering a range of subjects of interest to its readers. In Minority Trial Lawyer, you will find practical advice and tips, book reviews, historical matters involving minorities and the law, and articles about the unique issues minority litigators face in the profession.

The “Pipeline” Subcommittee will work to better prepare minority students—from high school to law school—for careers in the law. This subcommittee will promote existing programs—such as the Urban Debate Leagues for high school students, Council on Legal Education Opportunity Scholars Program for col-
lege students, ABA Legal Opportunity Scholarship for law school applicants, and ABA Judicial Intern Opportunity Program for law school students—through Committee member outreach to increase student awareness and utilization of these programs and Committee member mentoring of student participants. The subcommittee will also explore new opportunities; for example, a number of attendees at our recent business meeting at the Committee on Corporate Counsel Litigation CLE Seminar had significant trial experience, both in public and private practice, and expressed an interest in developing a Trial Advocacy Program to impart their knowledge and experience to younger minority lawyers.

The Program Subcommittee develops programs for ABA conference and teleconferences addressing issues particularly of interest to the Committee membership, and featuring Committee members as faculty. In fact, the cochairs have already submitted a program proposal to a CLE Planning Committee within the Section of Litigation to examine the difference between “token” diversity initiatives and meaningful opportunities for inclusion of minorities in leveraged and lucrative positions within corporate law departments and firms. Potential issues to be discussed as part of the program proposal include: 1) retention and promotion of minorities in law departments and firms, including the “pipeline” to senior positions and equity partnership; (2) the extent to which minorities act as “relationship” partners with clients; (3) the kinds of engagements and cases that law departments retain minorities to represent them in, and whether these are the kinds of large, lucrative matters that assist minorities in gaining “leverage” in a law firm, or small, less-profitable matters that tend to marginalize minorities in a firm; (4) the extent to which minorities are “pigeon-holed” to represent corporations in cases alleging discrimination, or where the opposing party is also a minority; and, importantly; (5) the extent to which law departments are reducing or ending relationships with law firms based on poor diversity performance, consistent with the “Call to Action” pledge: “We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.” The Committee cochairs hope that the CLE Planning Committee agrees that these are timely and important issues warranting discussion during a national ABA CLE event, and the cochairs will continue to lobby for such programs.

We have submitted a program proposal to examine the difference between “token” diversity initiatives and meaningful opportunities for inclusion of minorities within corporate law departments and firms.

Redesigned Website
Under development for the website are:
• A Litigation and Trial Practice Section, to feature (1) trial tips and litigation strategy articles authored by Committee members; (2) “repurposed” or reprinted articles on trial tips and litigation strategy from other sources within, and outside of, the ABA; (3) archive of selected Section of Litigation CLE conference program materials, including, for example, links to materials from CLE conferences cosponsored by the Committee (such as the Corporate Counsel Litigation CLE Seminar); and (4) links to Section of Litigation Professional Development CLE resources.

• A Business and Practice Development Section, to feature (1) interviews with minority rainmakers; (2) resources to assist Committee members in developing business relationships with corporate law departments committed to retaining minority lawyers, including signatories to Sara Lee General Counsel Rick Palmore’s “Call to Action” and corporate members of the Minority Corporate Counsel Association, including a listing of such corporations and, for each, statements and materials related to the law department’s diversity expectations of outside counsel—e.g., diversity criteria related to requests for proposal and evaluation of retained counsel—and links to corporation annual reports; and (3) links to free online legal news services, such as www.law.com and online editions of The American Lawyer, Corporate Counsel Magazine, and the Minority Law Journal.

• A Race in Legal Scholarship and Law Journals Section, to feature original scholarly work examining the impact of race on the law, and vice versa, as well as “repurposed” or reprinted articles.

• A Calendar of Diversity in the Legal Profession Events, to feature a calendar of diversity events sponsored by the ABA, the Minority Corporate Counsel Association, and other organizations promoting diversity in the law.

• A Diversity in the Legal Profession Resources Section, to feature links and descriptions of diversity resources and programs within the ABA (e.g., the ABA Commission on Racial and Ethnic Diversity in the Profession) and links to the websites of the Minority Corporate Counsel Association and other organizations promoting diversity in the law, as well as to minority bar associations.

• A Future of the Profession Section for Minority Students from High School to Law School—to feature links and descriptions of educational programs preparing minority students—from high school to law school—for careers in the law.

Please contact Cochair Paul McDonald.
Calling All Writers!

Would you like to contribute an article to Minority Trial Lawyer? We are always looking for articles that cover the many areas of interest to our readers, including trends that affect lawyers of color; cases and case law affecting the minority community; challenges faced by lawyers of color in the practice; and stories of opportunities and inspiration.

Send your article or query to buckleym@staff.abanet.org, or call Monica Buckley with your idea at 312/988-6097.
Rosa Parks

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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.

Title 48, § 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 passenger or person belongs; any person so refusing or failing to comply with 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.

While $500 is not a large sum of money to many people in 2006, it was certainly a lot of money in rural Alabama in 1955. In addition to the criminal sanctions imposed by law, the offender could reasonably be expected to be visited by members of the Klu Klux Klan or White Citizen Council and subjected to physical violence or other reprisals.

When Colvin refused to relinquish her seat on the bus to a white person, she knew what to expect. This refusal was dangerous. In her case, Colvin was simply dragged from the bus by a police officer, handcuffed, arrested, and convicted. This was a traumatic event in the life of any teenager, particularly one who lived in Montgomery, Alabama. Colvin’s refusal to yield her seat was an unplanned, unexpected, and courageous act for a lone teenage girl, who acted without the support of a local civil rights organization. Colvin’s heroic act set the stage for Rosa Parks, who would go on to be heralded as the “Mother of the Civil Rights Movement,” to replicate this feat.

When Colvin refused to relinquish her seat, she was dragged from the bus, handcuffed, arrested, and convicted.

Most of the activities that challenged racial segregation and discrimination during the civil rights movement were led or inspired by young people who were fed up with the accepted order of the day and intent on fighting against racial oppression. African-Americans’ having to sit in the back of the bus and being required to surrender their seats to white passengers are examples of racial oppression. Most older African-Americans of that day and time simply accepted the many “badges and incidents” of slavery as a necessary way to live in harmony with whites and accommodate their racist customs, traditions, and conventions.

In 1955, young African-Americans were not publicly challenging the many forms of racism and segregation. The youth-inspired civil rights activities and organizations did not begin until five years later when four African-American students at North Carolina A&T State University decided, without the support of a local civil rights organization, to launch a “sit-in” at the Woolworth’s lunch counter in Greensboro, North Carolina.

Colvin was a teenager who dared to make a difference without a movement on which to rely. She was ahead of other young African-Americans of her day in the effort to overcome continuing racial discrimination and hostility. She was not a failure, even though she was arrested and convicted. Since Rosa Parks knew and worked with Colvin in youth activities in Montgomery, it is probable that Parks was inspired by Colvin’s March 2 protest. Like Colvin, Parks, a middle-class African-American woman of that day and without an organizational base for support, chose to protest and resist the indignity of a woman having to give a seat to a man, even if he was white and possessed privileges and a sense of entitlement to the seat. On her way from work on a public bus, Parks chose, on a moment’s notice, to serve a blow to a minor, but irritating, vestige and symbol of oppression; this decision resulted in the destruction of a major segregationist law across the United States. It also inspired African-Americans to refuse to stand up in other cities and earned Parks the appropriate title of “Mother of the Civil Rights Movement.” Although Parks was not the first person to challenge the law, she was the person best positioned to rally the masses of African-Americans. When Parks stood up for her community, others recognized that the time had come for them to also fight back against the systematic racial repression.

Even though Parks was arrested, convicted, and fined, her effort inspired a generation of African-Americans who suddenly saw that there was value in public resistance. From this revelation was born a new sense of power and the need for organization and agitation by African-Americans who previously had stood in their place without a backbone for resistance. Dr. Martin Luther King, Jr. was propelled for-
ward from being an eager and gifted preacher into history’s limelight and struggle as an advocate for African-Americans who wanted and needed to struggle against racial oppression. In addition, successful litigation followed that crippled portions of “Jim Crow” segregation.

Soon after the U.S. Supreme Court determined that segregation in public education on the basis of race was unconstitutional in Brown v. Board of Education,1 Alabama civil rights attorney Fred Gray filed an action challenging the Alabama law that resulted in the arrests and convictions of Colvin and Parks. That case, Gayle, Et Al, Members of the Commissioners of Montgomery, Alabama, Et Al, v. Browder, Et Al,2 resulted in a decision affirmed by the U.S. Supreme Court declaring that state statutes and ordinances that required racial segregation on common carrier motor buses violated the Constitution. The Supreme Court’s decision adopted a district court’s opinion holding that there existed “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.”

With this decision, the Court made it clear that state-sponsored racial segregation was coming to an end. But for the public resistance orchestrated by Colvin and Parks, this type of decision likely would not have occurred when it did. There is no doubt that this opinion did not end racial segregation, but it put a significant legal wedge in the arsenal that fought state-sponsored segregation.

With respect to the civil rights struggle, Parks did not make significant contributions after the Montgomery encounter, except to provide inspiration and serve as a cheerleader. Her refusal to continue to yield to segregation resulted in a successful 381-day boycott of the bus company by the Montgomery African-American community. This boycott, led by Dr. Martin Luther King, Jr. and the Montgomery Improvement Association, was widely publicized on national television. National news reports and media coverage conveyed the message to African-Americans across the United States that they could and should also challenge this organ of racial segregation. As a result of Parks’s efforts, others similarly situated African-Americans decided to follow her example of activism.

Parks’s activism is critical and of more practical importance than Colvin’s heroism. Within the African-American community, Colvin was seen as an overeager and emotionally driven teenager. As a 15-year-old, her judgment was viewed as being rash and led by anger and a lack of respect for the Southern tradition. Parks, on the other hand, was an established African-American middle-class, church-going woman who occupied a position of respect in the African-American and white communities of Montgomery. Parks was also the trusted and highly respected secretary of the Montgomery NAACP and was viewed as a thoughtful moderate. After all, it was the local NAACP that had refused to make an issue out of Colvin’s arrest and conviction just nine months earlier. As such, Parks’s actions were not deemed to be rash and the product of youthful indiscretion, but rather the result of thoughtful retrospection and careful examination of the consequences of her actions. The view in the Montgomery and national African-American communities was that if Parks challenged segregation, then the time had come for other similarly situated African-Americans to become a part of this effort. And many did just that. So it was not so critical that Parks refused to give up her seat, but rather that it was this particular older, sophisticated woman of stature who decided to challenge an indignity of segregation to which she would no longer tolerate. It was this Rosa Parks who became the accepted symbol as “Mother of the Civil Rights Movement.”

Recently, the Alabama state legislature granted a pardon to persons who were arrested and convicted as a result of protest activities against race segregation. This Act occurred more than 50 years after Parks’s arrest and probably is more of a slight and disservice than it is an honor or recognition of the impact of Parks’s life on civil rights. Within the African-American and civil rights communities, arrests and convictions have long been recognized as “badges of honor” for those arrested in civil rights demonstrations to be able to brag about the price that they paid for African-Americans to be free in the United States. Civil rights activists never considered that the violation of an unjust and illegal law was a crime for which the individual should be ashamed and seek to be pardoned. Clearly, this intended honor diminished the heroism of the original act of civil disobedience. The contributions of Parks were bigger than the supposed clearing of her name by the Alabama legislature, and it is for this gigantic act of unselfish sacrifice for which she should be remembered and honored.

Endnotes
4. The Rosa Parks Act was passed on April 19, 2006, and allows for survivors and relatives of those arrested and convicted in civil rights demonstrations in Alabama to purge their past criminal records.

Irving Joyner is a professor at the North Carolina Central University School of Law, where he teaches Criminal Law, Criminal Procedure, Civil Rights, and Race and the Law.

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www.abanet.org/litigation/committee/minority
methodology, supporting documents, and opinions must logically flow to the expert’s conclusions. Don’t forget that under Daubert, the underlying analysis must be testable, have merit outside of a litigation venue, provide some measure of error rate, and have general acceptance in the scientific/business community.

**Play from Higher Ground.** Stay mindful of key elements of the other side’s story. Thus, your expert’s testimony should reflect elements of the adversary’s story that may be worked to your advantage. For example, if there are differing views on market definition of the products at issue, there may be material the other side relies on that identifies its competition. Opportunities to compare and contrast key assumptions should be supported by the expert’s use of parties’ documents and independent investigation.

**Show Pictures.** Use a few simple, easy-to-understand demonstratives. Each demonstrative aid should have a very specific purpose that is explained up front as each is introduced. Prepare the demonstratives in advance to practice with the expert, highlighting the expert’s opinions and basis for the opinions in an organized manner. But, be careful not to overrehearse. The expert’s testimony should appear more like a dialogue than a commercial. Also, keep in mind the jury will not have the use of demonstratives in the jury room.

**Get the Expert Moving.** If possible, create an opportunity for the expert to bring freshness to the testimony. Find a way to get the expert off the stand while testifying. Allow the expert to use a pointer and explain a demonstrative while directly facing the trier of fact. This will break up the expert’s testimony, enliven the delivery, and allow the trier of fact to relate better to the expert.

**Use Examples/Allegories.** With complex expert testimony, good examples help the trier of fact understand key concepts. Examples should be on point. For instance, to explain the meaning of incremental costs in a damages analysis, a wedding may be a useful example. Say that the bride plans on 100 people attending the reception and the groom’s family wants 20 more guests—certain costs will stay the same, such as the band, the clergy, and use of the facility; however, other costs will increase, such as the food.

**Keep It Simple.** Emphasize only a few key concepts or numbers you want the trier of fact to remember. Although it may be tempting to do so, be careful not to overload any demonstratives with a confusing quantity of numbers or facts.

**Be Enthusiastic.** Encourage the expert to speak in a natural modulating voice, addressing the trier of fact directly whenever possible. Even though there may be many documents and numbers in the expert’s testimony, the expert must keep his or her nose out of the papers or exhibits and maintain appropriate eye contact.

**Don’t Get Caught Short.** Clarify the basic theories of the testimony so that if the trier of fact rejects a portion of your expert’s analysis, your view of the issues can still be assessed. For example, in a damages analysis, items to cover are the period of time reflected in the damages, specific damages calculations for different products, basis for product profits, interest rate used in prejudgment interest, etc. If possible, identify distinctly separate damages issues independent from one another, where the balance of the analysis can remain unaffected should the trier of fact disagree with the expert for a part of his or her testimony.

**Know Your Expert.** Your expert may be a person from within your client’s organization or an independent engineer, accountant, economist, financial analyst, or industry specialist. Although extensive experience may not always prevail, some experience may reduce the risk of an expert not understanding proper demeanor. You must know your expert’s background and be sensitive to his or her strengths and weaknesses. You should also work with the expert so that you are both comfortable with the degree of latitude he or she will have while testifying.

**Don’t Underestimate the Jury.** Assume the jury is every bit as observant as you are (or more so). Make sure your expert explains why the bases and methodologies underlying his or her opinions are the most reasonable and appropriate. Acknowledge and address any weaknesses in your side’s case. And, most importantly, be sure that your expert is prepared to keep his or her poise on the stand.

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