Slowik: Southland attorney's historical research uncovers shocking cases of legalized racism

By Ted Slowik
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Attorney John B. Murphey, a partner with Chicago-based Rosenthal, Murphey, Coblentz & Donahue, is general counsel for several towns and school districts in the south suburbs. (John B. Murphey)

Nearly everyone has heard of Rosa Parks and knows the story about how, in 1955, she refused to give up her seat on a bus in Montgomery, Alabama.

"Rosa Parks is honored as the 'first lady of civil rights' and the 'mother of the freedom movement,' and her quiet dignity ignited the most significant social movement in the history of the United States," Congress declared in a 1999 resolution.

For about a century after the Civil War ended, laws allowed for the separation of races on public transportation, in public schools and throughout society. Today, we recognize that segregation is unconstitutional.

Many people are familiar with famous court cases like Plessy v. Ferguson, a landmark 1896 U.S. Supreme Court decision that upheld the "separate but equal" doctrine, and Brown v. Board of Education, a 1954 case that overturned the Plessy ruling.

But there are many other, lesser-known cases that offer fascinating insight into our nation's legal justification for publicly separating blacks and whites for so many years.

"I enjoy researching and reading old law cases, not so much for the legal principles, but for what these cases tell us about the society of the times," said attorney John B. Murphey, a partner with Chicago-based Rosenthal, Murphey, Coblentz & Donahue.

Murphey, 67, is general counsel for Country Club Hills, Dolton, Hazel Crest, Olympia Fields, Richton Park and Moraine Valley Community College in Palos Hills. He's performed legal work for dozens of other south suburban towns and school districts over the years.

For Black History Month this year, Murphey shared with his clients an essay he wrote about legal cases involving segregation in public transportation in southern states in the late 1800s and early 1900s.

“As an educational institution of higher learning, Moraine Valley Community College supports and appreciates individuals who continue to contribute to the literature of factual, and many times overlooked, information that can help us improve our society,” the college said in response to my request for reaction to Murphey’s essay.

In his essay, “Before Rosa Parks: Selected Case Studies on the Impact of Separate Transportation on African-Americans,” Murphey wrote about how courts established a legal basis for racist policies.

Rosa Parks seated toward the front of the bus, Montgomery, Alabama, 1956. (Underwood Archives/Getty Images)

“I was shocked to read case after case where blatant racism masqueraded as legal scholarship,” Murphey wrote.

Murphey told the story of an Alabama Supreme Court ruling involving a woman named Alice Bowie. One summer day in 1900, the Birmingham woman and other teachers accompanied about 100 Sunday school children on a train to a nearby town for a picnic.

The area of the train reserved for blacks was packed with children, so Bowie sat in an area designated for whites. When she refused to move, a conductor and motorman physically tried to throw her off the train. She sustained a severe leg injury and sued the railroad to recover for her personal injuries, Murphey wrote.

The Alabama Supreme Court ruled in favor of the railroad and cited an 1876 Pennsylvania Supreme Court decision that said it was God's will that blacks and whites be separated.

"Why the Creator made one black and the other white we know not," the Pennsylvania court said in its decision, Murphey wrote. "God has made them dissimilar with those natural instincts and feelings which He always imparts to his creatures when He intends that they shall not overstep the natural boundaries He has assigned to them."

Southern courts used the Pennsylvania case to uphold laws prohibiting interracial marriages, and Alabama applied the ruling to deny Bowie compensation for her injuries, Murphey wrote.

"By uninterrupted usage, the blacks live apart, visit and entertain among themselves, occupy separate places of public worship and amusement, and fill no civil or political stations," the Alabama court ruled. "Law and custom having sanctioned a separation of races, it is not the province of the judiciary to legislate it away."

Murphey wrote that his research uncovered instances where, even when courts and society used legal means to separate people of different races, some situations posed dilemmas. Courts arrived at different conclusions in cases involving white sheriffs who had to transport black prisoners to jail by train.

"Naturally, the sheriff needs to maintain control and custody over his prisoner," Murphey wrote. "Where do they sit in a segregated rail car?"

One court decided the sheriff should accompany the prisoner in the area reserved for blacks. Although both races benefited by being separate from each other, the court wrote, "it is well known that the leading purpose of this statute was to protect the white race from the presence of negroes while traveling on trains."

In another case, a court decided the black prisoner was little more than baggage, and thus could accompany the sheriff in the area of the train reserved for whites. Another left it up to the discretion of a railroad to decide on a case-by-case basis.

Murphey said he was shocked by how American courts justified racism.

"Page after page of these opinions struggle with this question, with no recognition of the inherently abhorrent nature of the inquiry," Murphey wrote.

Murphey found a 1907 case in Georgia in which a man named Nathan Wolfe boarded a train with his sister and sat in an area reserved for whites. The conductor asked them to move to the area for blacks.

"Do we look like colored people?" his sister asked. Other passengers overheard the commotion, and Wolfe sued the railroad for slander.

“The question has never heretofore been directly raised in this state as to whether it is an insult to seriously call a white man a Negro, or to intimate that a person, apparently white, is of African descent,” the Georgia court said in its decision, Murphey wrote.

In yet another appalling example from our past, a state’s highest court established a legal basis for a white person to pursue damages for being mistakenly identified as black.

“To wrongfully, though unintentionally, accuse a white man with being of Negro descent, and trying to put him in that portion of the car where by law he is forbidden, thus illegally causing mortification and pain, creates an injury for which the law allows reparation,” the Georgia court ruled, Murphey wrote.

In a final case study, Murphey wrote about a case involving Jessie Lee Gardner, a black woman who sustained a brutal beating on a crowded bus in Mississippi during the 1930s.

Although Gardner was sitting in an area reserved for blacks, a white man ordered her to give him her seat, Murphey wrote. When she refused, the white man violently beat her. She was pregnant at the time and miscarried.

Gardner sued the bus company and prevailed for an unusual reason, Murphey wrote. Mississippi law at the time required bus and railcar operators to separate blacks and whites “by dividing the vehicle by a partition constructed of metal, wood, strong cloth or other material.”

The court found the bus company violated the law because it only provided a small sign, 4 inches by 8 inches, on top of a seat with the words “white” on one side and “colored” on the other, Murphey wrote. The court awarded Gardner $1,000 in damages.

“What this case boils down to is a decision in favor of a black woman for the inherently racist reason that the bus company did not adequately assure the separation of the races,” Murphey wrote.

The case studies showed how the “separate but equal” doctrine was deeply ingrained in society during the decades leading up to the civil rights movement, Murphey concluded.

“In my opinion, the court cases discussed above illustrate how extraordinarily courageous Ms. Parks’ Dec. 1, 1955 decision really was,” he wrote.