

Interviewee: Mark Gray

Interviewer: David Cline

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DC: Good morning. This is David Cline in Louisville, Kentucky on June the eighth for the Southern Oral History Program's Long Civil Rights Movement project. I'm meeting with Attorney Mark Gray this morning. If you could just introduce yourself for the tape.

MG: I'm Mark Gray, an attorney here in Louisville, Kentucky.

DC: We're speaking today because you've recently been hired on behalf of a class action lawsuit pertaining to Rubbertown industry and pollution in that area and maybe other areas; I'm not sure. If you could just describe a little bit about what the lawsuit is and how you came to be a part of it. Then we'll talk a little bit more extensively about how you see these issues playing out in Louisville.

MG: Our law firm, which is Gray and White here in Louisville, and my partner, Matt White, along with a lawyer in Detroit, Michigan, Peter Missouga, and Mr. Missouga, he's a professor at Michigan State Law School and has spent a great deal of his life dealing with these types of environmental issues and is very proficient at taking on companies on behalf of people in areas in which there's a lot of pollution and problems. But in any event, we were retained and hired by a number of individuals in an area in Louisville which is generally known as Rubbertown and I believe the area gets its name going all the way back to somewhere around World War II in which that area was used to produce certain synthetics and rubber on behalf of

the war effort in World War II. Then after that, certain companies came in, certain companies came out, but it's always been somewhat of an industrial area.

We were hired in order to attempt to find a solution and under the law, that solution could be an injunction, sort of an injunctive relief effort in which the companies are required to stop polluting, or a monetary settlement, which is to compensate the people for their claims generally arising in the area of the law that we would call nuisance. And that doesn't necessarily mean that it's a small amount, but it's a nuisance in the sense that it's invading their right to use their property in the manner in which they should be entitled to use it, or as you and I somewhat discussed earlier, the ability just to move out of the area. And one of the big issues in this case is that the area of town from a socioeconomic standpoint, these people do not have the ability just to pick up and move and also the ability to sell your home, because everyone knows that they don't want to live next to a dirty landfill or a smoke stack that drops ash on their car every morning when they go out or a place that their above-ground swimming pool has soot lining the water every day. They all want to move, but they can't, not only because they can't possibly afford other places, but no one would buy their homes from them. We're trying to address that from a class-action standpoint instead of an individual standpoint.

DC: So a property buy-out is one possibility, but not the only one, is that correct?

MG: Yes, I would say that's correct. The law probably would not fashion a remedy that says buy out the property, but the use of the monies, if we're successful, would go to allowing the people to move and buy out.

DC: Right, I see. Now how many individuals are involved in the case?

MG: The number of class representatives in the two cases that are pending currently total between the two is around seventy-five individuals. The affected area involves, there's an

area of town known as Riverside Gardens and Lake Dreamland and that is around, we believe, four hundred and fifty homes and thirteen hundred residents. The area known primarily as Rubbertown would be more in the neighborhood of, I believe, thirteen to sixteen hundred homes and possibly three to four thousand residents.

DC: That's quite a few people.

MG: Yes, it's heavily populated. It's a fairly dense area. And you've been down in that area?

DC: I have. I actually just had a very interesting tour given to me by a relative of the man who developed Lake Dreamland, whose family farm was divided up to become Lake Dreamland and so he drove me around.

MG: Interesting.

DC: And the original house is still there on Lake Dreamland Road. So that's Dreamland and Riverside Gardens and you have people who have joined the suit from all three of these neighborhoods?

MG: Yes.

DC: We talked a little bit about this, but can you tell me just a little bit more about how race plays out in this—which are the white neighborhoods, which are the black neighborhoods—and how that has worked?

MG: I'm not certain that there is a significant race component as much as it's a socio-economic issue. Primarily, Riverside Gardens and Lake Dreamland are primarily white, caucasian areas. The other area of town, which would include places like Park Duvalle, and the Park Duvalle neighborhood, Louisville's done a fantastic job in changing that from what we traditionally know, those of us who are of a certain age past forty, as housing projects, has

changed into very nice row houses, condominiums, and a very nice area, and that was put in place in the 1990s by the city and I assume the federal government. But that area of Park Duvalle, west Louisville, which would encompass Broadway going maybe 34th, 35th Street toward the plants and the river, Shawnee Park, Chickasaw Park, that area of town, that would be a primarily African-American neighborhood.

I think that there is, I know that there is pollution and problems affecting both areas of town, but I think the common link is that there is not a political base and there is not a socio-economic ability by the residents of this area to affect change other than having a lawsuit. And I don't think there is any doubt that these plants, if they did what they did in other areas of town, primarily white neighborhoods with wealthy middle-class, upper middle-class folks, that it wouldn't last very long. But the people, and what I really enjoy about the case, is that the people in these areas are very hard-working, good people. And all our clients, almost all of our clients, I would assume, they're good people, they're hard-working people. They work in this community. They've lived in this community for a number of years. A lot of them grew up in this community. A lot of them live in the same places they grew up. They're people that certainly need to have some sort of relief.

DC: Now is it primarily air pollution that is the concern or are there other potential leaks or groundwater contamination?

MG: It's primarily air pollution. There's fallout, there's odors, there's air pollution. But there's also, certainly there's landfills, there's contaminated groundwater. I don't think there's any doubt about that. And again it's the whole area down there that is affected by, whether it's a fallout, whether when the clouds come in and it's a rainy day, they pollute more, because it's

hard to see it and you get more fallout. And you have noxious odors, you have the water contamination, you have all of it.

DC: I was out there the other day and just pulled in to one of the plants, into the parking lot just to sort of look at the plant, and the security sort of rushed right out and took down my license plate tag and everything. It just seemed as if there was a suspicion that was just right on [the surface], I mean, it wasn't even masked. It made me sort of wonder about the plants' community relations if this was my greeting and welcome to the parking lot.

MG: Well, this certainly in this community is not a new issue. The lawsuit may be a new issue, but the problems of the area known as Rubbertown have been going on forever, years and years and years.

DC: I don't know if you can even speak about this on behalf of your clients, but is this sort of the end result of many years then of frustration, just seeking another tool then at this point?

MG: Yeah, I don't--. I mean, you're right, it would be for--. I don't know what would go on in the minds of all our clients, but certainly this is hopefully the tool that ultimately puts a stop to a lot of these problems. And the fact of the matter is that the companies can stop polluting if they want to stop polluting. It happens everywhere. Under the law, this isn't novel. It may be novel in this community and against these particular companies, but in many places, Detroit, Chicago, Cleveland, there's been lots of cleanouts and there's things companies can do to prevent this from occurring. A lot of companies stop and change and as you well know, in Cleveland, it's an interesting story. Cleveland used to be very pollutant and now it's very clean. You can do it if all parties, the government, the corporations, the people, if they have a good

relationship and things are working and there's an impetus to do that. Sometimes it's regrettable that you have to get involved in legal proceedings to force those things to occur.

DC: Now has the city been much involved in monitoring or bringing pressure to bear on the companies?

MG: I can't really speak to that issue. I think there's constant, obviously, communications between the people in that area of town and the city and there's obviously, this goes through multiple administrations. This isn't something that has recently popped up and occurred. But I certainly think the people in that area could tell you more about that.

DC: Okay, alright, good. Being that this is a lower socio-economic area and jobs are of great concern and that's certainly one thing that seems to be brought up, certainly by industry and the companies, is the sort of threat of, "Well, we'll just pull out and you'll lose x number of jobs." This is something that you hear from politicians as well. Is that sort of a long-running part of this story, that threat?

MG: Yes, I believe it is. I think companies can operate efficiently without polluting and have jobs, because they do it all over the country. Here for whatever reason, I would believe corporate profit, they've decided not to.

DC: It also seems to me that these companies are quite entrenched here and the threat of pullout seems to me a bit of blowing smoke, from my perspective anyway.

MG: Blowing smoke. (laughs)

DC: Yeah, so to speak. They're blowing all sorts of smoke and other things. I find it an interesting strategy that they claim that they may move out, because you go around and see those facilities and they don't appear to be going anywhere and they're essential to the automobile industry among other things.

MG: Yes, I believe you're right.

DC: So what else can you tell me about what you see this suit accomplishing just in general terms?

MG: Well, I think that our clients would certainly like this suit to accomplish an end to the pollution, which is a rather simple goal: stop polluting the area. The companies know what they need to do to stop. They know how to stop it, but they just choose not to. I believe as a lawyer that our clients are entitled to some form of monetary damages for going through this. I certainly know that if it was happening to me every day, I would want not only for it to stop, but I would want some form of monetary relief, because that's our justice system. For better or worse, that's what our justice system does in America. It compensates people financially for their losses. So I think the primary concern and what would better society as a whole obviously is to stop the pollution, because everybody agrees pollution is bad. It's hard to run into somebody that says it's okay to continue to put pollution into the atmosphere. So not only does this affect the residents of that area, but in theory, it also affects everyone else, because there's more pollutants going into the atmosphere. But as for the people in that area, there are some people that certainly need to be able to move and there are other areas that need the pollution to stop so they can go about having the quiet enjoyment of their property.

DC: Now these neighborhoods are those that are most adjacent to the plants, but certainly air pollution travels and is it possible that others may join this case or that there be other cases that represent a larger area?

MG: I think that that's a possibility. There's certainly the claims we have brought to date, there are other companies in the area.

DC: How many companies are named currently?

MG: Two companies in that affected area of town.

DC: And those are?

MG: Hexion and E.ON, and E.ON is the LG&E—

DC: Oh, that's LG&E, alright.

MG: LG&E, for the tape, is the local power company. Local Gas and Electric is what it used to be known as. Those are two of the plants in the area. There's other plants in the area.

DC: Can you tell me how those two emerged as the major focus of this suit?

MG: I think probably at this point in time, I can't talk about that.

DC: Okay, sure. This is an interesting interview, because I know we've got current litigation, so there's a lot we can't talk about. You said a little bit about this, but I just wanted to pursue it a little bit more in terms of looking—I described to you the project that I'm doing as part of this Long Civil Rights Movement project and looking at environmental issues as part of social justice issues and I'm just curious about your opinion of that, whether you agree that our conception sort of makes sense of this as a continuing issue.

MG: Yeah, absolutely. To the extent that I know about it, I absolutely agree. I think this is a social justice issue. I think there are interesting issues that aren't necessarily legal issues. I think the legal issues in these cases are fairly straightforward. Everyone should be entitled to the quiet enjoyment of their property. They own the property. They shouldn't have trespass and nuisance on their property, and trespass being fallout, odor pollution, things of that nature. Obviously, there's straightforward legal concerns about toxic water, toxic air, and those sorts of things. And as you brought up, there's issues that companies have or claim to have about jobs and the ability to operate profitably and things of that nature, if they have to operate with certain legal constraints. But from a social justice standpoint, in my mind, as my opinion, it is



very interesting that these sorts of legal cases and events always occur in areas in which there's a lower socio-economic area or an area in which there's a racial component. And when I say race component, I mean not a white majority in the area. I'm not a history scholar. I don't understand the whole parameters of that like you do, but for me, it certainly is disconcerting that there's a certain part of this community that is forced to deal with this sort of blighted situation and that their only relief is to bring lawsuits not only on behalf of themselves as the individual plaintiffs, but on behalf of all other people that are similarly situated, their neighbors and others.

DC: I do think it's interesting just as an outside observer that Louisville is a very sort of racially-stratified city, but an issue like this really does unite people across other lines, across socio-economic lines, rather than race lines. I'm wondering, have you had large community meetings or attended community meetings in which people across race lines have addressed these kinds of environmental issues?

MG: I think the answer to that is yes and I'm not speaking about me personally, but my law partner has attended a number of those types of meetings.

DC: I'm just wondering, is this an issue that then really does bring people together in a sense?

MG: I think it does. I think it should, but yeah, I think it does. I think everyone in the community needs to come forward and deal with this issue. That would be my hope that they would, because there needs to be a solution. We'll see.

DC: You've talked about some other cities, but can you tell me a little bit more about other models or other places that you've looked at that are similar?

MG: I don't know if I can, probably not in the detail that you want me to, or to actually talk about.

DC: Okay.

MG: But they're out there.

DC: Okay. (laughs) Just for the record, you said there's two cases. Is that one against each company?

MG: Yes.

DC: That's how it works, okay. I imagine this is going to be a rather time-consuming and laborious process mustering lots of scientific evidence, etcetera. How long do you see this playing out?

MG: I think the way you put it is exactly correct. Having started litigating class-action cases in 1992, they all seem to take on a life of their own and they keep going and they go on for fairly long periods of time. But it's certainly a worthwhile, we believe to be a worthwhile endeavor for our law firm to take and to see if we can't get some sort of change.

DC: I think we've basically covered the facts of it. Is there anything else that you'd like to add or tell me?

MG: No. I mean, not about this. I certainly appreciate you calling. I think this is a great project that you have at the University of North Carolina at Chapel Hill and the Southern Oral History Project. Maybe in forty years, I'll look back and we can see if this fits in anywhere or not. I'm not sure.

DC: We'll come back again when we can talk a bit more openly, I guess, down the road. I could turn this off and maybe you can give me some names of other folks that you can point me towards that it would be good to talk to. Great, thank you.

**END OF INTERVIEW**

Transcribed by Emily Baran. July 2006