

Milbank Associate Scores 'Emotional' School Segregation Win

By **Aebra Coe**

Law360 (March 8, 2018, 11:52 AM EST) -- The Eleventh Circuit last month barred the racial segregation of an Alabama county's public schools in a personally meaningful win for a Milbank Tweed Hadley & McCloy LLP associate who worked on the case pro bono for more than two years.

Milbank complex litigation associate Gary Crosby grew up in Alabama less than 45 miles from Gardendale, a predominately white city that attempted to secede from the rest of the Jefferson County school system, an effort the Eleventh Circuit on Feb. 13 found illegally impeded the county's desegregation efforts.

Crosby's own father, an African-American, attended a segregated school in Alabama. And Crosby spent two years with Teach for America, working with middle- and high school students in New Orleans. Crosby says a confluence of those experiences meant the school desegregation case had special meaning for him.

"It was really emotional and personal at times because my father attended a racially segregated school in Alabama," he said.

"As a former teacher, I am deeply concerned about the message of inferiority sent to black students by Gardendale's racially motivated separation efforts," he added. "This case has given me the chance to use my skills as a litigator to ensure that every student is afforded educational opportunities that are free from racial discrimination."

The case, *Stout v. Jefferson Cty. Bd. of Educ.*, is a federal school desegregation action that the National Association for the Advancement of Colored People's Legal Defense Fund has been litigating for decades, and which Crosby has been offering his help on for the past two years.

The case hinges on Gardendale's efforts to secede from the Jefferson County school system and set up its own local school system, which the LDF attorneys say would have excluded black students from neighboring areas and led to more racial segregation within the county school district.

Advocates for the secession argued that their efforts were not racially motivated, but that instead they simply wanted more local control over their school system. However, an Alabama federal judge determined from evidence at trial — which included emails and social media posts — that Gardendale's proposed secession was, in fact, racially motivated.

Despite the finding of intentional discrimination, the district court allowed the city's schools to partially

secede from the rest of Jefferson County.

The Eleventh Circuit agreed with the lower court's decision regarding Gardendale's discriminatory intent, but took it one step further and concluded that any secession violates a federal desegregation order established in 1971 in the wake of extensive litigation to implement the United States Supreme Court's 1954 ruling in *Brown v. Board of Education*.

Last week, in a reversal of earlier statements, Gardendale's board of education, mayor and city council announced that they would not appeal the Eleventh Circuit's decision to the U.S. Supreme Court.

"We hope that this case will sound the alarm to other communities that resegregation will not be allowed," he said.

Crosby first started working on the case in 2016 when he was still fresh out of Tulane University Law School. The attorney had been a summer associate at Milbank and was poised to begin his career in private practice there, but first took an opportunity presented by the law firm to participate in its pro bono fellowship program.

The program allowed Crosby to join up with the NAACP LDF as a fellow — while employed by Milbank — to help tackle the Alabama school desegregation case.

While he may have only recently graduated law school, Crosby was not short on experiences to draw from in order to become a valuable part of LDF's efforts to fight school segregation in Jefferson County.

He'd spent time as a law clerk for the U.S. attorney's office in New Orleans, earned a masters in social policy at London School of Economics in 2013, worked three years as a teacher in low-income schools while with Teach for America, and was an intern for the Barack Obama presidential campaign in 2008 as an undergraduate student.

As a part of the NAACP LDF team, Crosby was able to contribute to the case in a number of ways, all the while gaining skills he can now use as a New York-based attorney in Milbank's complex litigation group.

Over the past two years — both as a fellow and as a pro bono attorney on the case — he has assisted the organization's attorneys with all aspects of trial preparation for the case in federal district court.

And, when the case was appealed to the Eleventh Circuit, Crosby participated in two moot court exercises at LDF's New York office, serving as a mock judge and helping craft responses to difficult questions.

On the morning of oral argument, opposing counsel handed the legal team a number of cases that had not been introduced into the case previously, and they had five minutes before oral argument to quickly review the cases. Crosby said he and the others sprung into action, working as quickly as possible before the arguments began.

"It was a great example of teamwork and working well under pressure," he said. "Those were some of the many things I learned while working on this case. Based on this experience, I observed that with litigation you have to be flexible and willing to make sure that even if things don't go as planned, you have a plan B."

--Editing by Rebecca Flanagan and Emily Kokoll.

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