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A History of the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association

by Mark S. Brodin

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There has been much media attention of late concerning the whereabouts of the children of the sixties, the generation that came of age during that incredible decade of change and upheaval. We are presented with stories of prominent radicals turned stockbrokers, hippies who have traded their love beads for designer att-  aches cases. Among the institutional children of the sixties that have survived and indeed prevailed with their principles and commitment intact are the members of the Lawyers' Committee for Civil Rights. What follows is a history of this unique group.

Months before his assassination in Dallas, President John F. Kennedy called to the White House 250 of the nation's leading lawyers, from prestigious "downtown" firms across the country, and sought their involvement in the growing civil rights movement. The president recognized that the legal profession had a critical role to play in the assault on racial separation and discrimination, and that the enactment of laws protecting minorities would be a meaningless gesture without the legal resources to secure enforcement. He also acutely perceived that the demand for such legal representation would strain traditional sources of support, and thus he enlisted the participation of pro bono attorneys from the legal establishment. The meeting in 1963 was the genesis of the national Lawyers' Committee for Civil Rights.

The next five years were among the most turbulent in our history. A grass-roots protest movement thrust to the forefront of the nation's consciousness the reality of widespread injustice, inequality, and poverty. Southern politicians arrogantly blocked the entry of blacks into "public" schools and restaurants, while civil rights workers were slain in cold blood. Northern cities erupted in riots as the two societies identified by the Kerner Commission drifted further apart. The assassinations of Martin Luther King and Robert Kennedy, followed by the Days of Rage in Chicago during the 1968 Democratic Convention, seemed to confirm that our society was coming apart at the seams.

Among the lessons learned during these years was that the South did not have monopoly on mistreatment of black and other minority citizens. Northern cities, including our own Cradle of Liberty, were exposed as places where the American Dream was a reality only for some, and where the quality of education, housing, and jobs depended in large measure on the color of one's skin. Boston, once the center of Emancipation activity, was forced to confront its own hypocrisy.

In the midst of the crisis in urban America, the Boston Lawyers' Committee for Civil Rights was established in 1968. Funded by a start-up grant from the Ford Foundation (supplemented with contributions from law firms), the Boston office was the first such project in the North. Kennedy's vision of a legal profession mobilized to support peaceful progress in civil rights had come home to his birthplace.

The Boston Lawyers' Committee adopted the model of the national organization—pro bono involvement of practitioners from the established corporate firms. The basic premise was that these firms would be willing to undertake representation in specific matters after the staff had investigated the facts and concluded that there was merit to the cause and need for legal assistance. It was understood that the firms, once accepting a project or case, would discharge their professional obligations in the matter in the same way and with the same commitment as they would to regular, fee-paying clients. In its first year, the Committee involved fifteen large firms in over eighty projects and cases developed by the staff. By 1972 more than two hundred Boston lawyers from twenty-five firms were participating.

Among the first concerns of the Boston Lawyers' Committee was the criminal justice system. In 1969 the Committee formed its Criminal Justice Lawyers Panel, which involved attorneys in cases with law reform potential, and the Lawyers Drug Panel, which provided representation to drug offenders with a particular eye toward diversion into treatment programs. In October 1970, the Committee published an exhaustive empirical study titled The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston (the "Orange Book"). The result of eighteen months of data compilation from court and probation records, the Orange Book followed the criminal justice process in six district courts. The report documented the serious disparity in treatment of defendants de-
pending on their economic status and concluded that in the determination of guilt or innocence, finances played a more important role than the facts bearing upon the charge. The report further exposed substantial variations in the quality of justice dispensed in the district courts, which operated independently, isolated from judicial review and without any uniform rules of procedure. Among the recommendations made were elimination of the trial de novo system and replacement by a direct jury trial system, elimination of the bail bondsmen and their replacement by a court-administered money bail system, adoption of uniform procedural rules, expansion of the public defender office (the Massachusetts Defenders Committee), and involvement of the private bar in indigent defense work in the district courts. The Orange Book became the impetus for such reform in subsequent years.

The early years of the Boston Lawyers' Committee also saw the creation of other pioneering projects. In conjunction with Boston College Law School, the Urban Legal Laboratory was launched. The ULL was a clinical program designed to develop the lawyering skills of students and utilize those skills on behalf of clients in civil rights and law reform cases. Law students received a semester's academic credit and worked under the supervision of staff and volunteer counsel on Lawyers' Committee projects. While its office was originally in the suite with the Lawyers' Committee itself, the ULL moved out to the Newton Campus of Boston College and has operated since 1976 as an integral part of the Law School's clinical education program. Hundreds of students have been placed in dozens of law offices, providing invaluable assistance to attorneys over the years and exposing the students to the challenges of public interest practice.

In 1972 the Committee established the Prisoners' Rights Project, which played a pivotal role in the movement during the mid-1970s to assure due process for inmates in disciplinary and classification matters and to guarantee constitutionally minimal conditions of incarceration in the state system. Ultimately the Project became Massachusetts Correctional Legal Services, an independent office with public funding and an ongoing commitment to the goals of the original project.

Nineteen seventy-three was a watershed year for the Boston Lawyers' Committee and for the concept of private bar activation. In a special issue of the Boston Bar Journal BBA President John G. Brooks announced to its members that the Association would be "breaking ground new to the organized bar in further fulfillment of the obligations of our profession to the public" by "assuming[ing] sponsorship and responsibility for a project designed to enhance, to facilitate, and in some significant measure to provide legal services in important cases where client resources cannot support the costs of normal representation." The project was the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, a name that told the story of a unique partnership. As Brooks wrote, "we are making a major move, independent of the vagaries of public funding, which we hope will be the forerunner of, and bellwether for, similar undertakings by bar associations elsewhere." Carl Sapers and John Perkins, who had advocated the new project, observed that

If the poor and the underrepresented are to have equal justice, it is not enough that we leave their advocacy to young and inexperienced counsel, however dedicated such counsel may be. It is not enough that the organized bar contribute, from time to time, to funding such advocacy programs. The Boston Bar Association has accepted full responsibility for the development of a public interest law office which will be an integrated part of the Bar itself and will be supported professionally and, to a large extent, financially by the lawyers of this city. We know of no better way to make clear our commitment to the administration of justice for all the citizens of this community.

The creation of a privately supported law office to advocate on behalf of poor and minority residents of Boston could not have come at a more opportune time in the city's history. Since the mid-1960s pressure had been building to challenge the racial segregation of the city's public schools. The intransigence of the School Committee and other politicians doomed all efforts at voluntary solution to failure, and black parents finally sought redress in federal court. When Morgan v. Hennigan was filed in March 1972, the Lawyers' Committee (through the firm of Foley, Hoag & Eliot) appeared with the Harvard Center for Law and Education as co-counsel for the plaintiffs. United States District Judge W. Arthur Garrity ruled in favor of the plaintiffs in June 1974, concluding that the public schools had been intentionally segregated by the School Committee through the use of practices such as busing children beyond neighborhood schools to maintain a dual system, one for white children and another, far inferior, for black children. When the First Circuit Court of Appeals affirmed the decision, it observed that "in light of the ample factual record and the precedents of the Supreme Court, we do not see how the court could have reached any other conclusion."

Yet, as noted by Anthony Lukas in Common Ground, "Garrity's impressive opinion did nothing to mitigate the opposition to desegregation in the Boston's white neighborhoods." Thus, when the district court issued its
remedial order to take affect in September 1974, the stage was set for a confrontation that would put Boston on the front page of newspapers across the nation. Opposition to forced busing, inflamed by opportunistic politicians, turned into violence in the streets, and scenes of the Tactical Police Force attempting to protect black school children from mobs of angry protesters gave Boston the look of Little Rock.

Despite persistent harassment and even death threats Judge Garrity courageously, compassionately, and patiently presided over the desegregation process. Reason finally prevailed and Boston ultimately achieved a unitary school system, the quality of which was improved for all its students. In the process, the Boston Lawyers' Committee demonstrated what a critical role the private bar could play in representing politically unpopular causes and securing justice in the most adverse of circumstances.

With the resolution of the desegregation litigation, the Lawyers' Committee turned its attention to other problems in the school systems in Boston and throughout the Commonwealth. Since 1978, staff and counsel from participating firms have provided ongoing representation to parents in numerous matters concerning bilingual programs. The Committee has also brought litigation challenging the unequal financing of public schools based on the property tax in an effort to enhance the opportunities of children in less affluent communities.

Recognizing the central importance of fair representation for minorities in the political process, the Committee has been involved in numerous voting rights cases, beginning with an amicus appearance in a mid-1970s action unsuccessfully challenging the at-large scheme for electing city councilors, a battle that was ultimately won outside of court in the legislative process. In 1983 the United States District Court ruled in favor of the plaintiffs in a Committee case alleging that the Boston City Council redistricting plan violated the constitutional principle of “one-person, one vote” by diluting the votes of minority residents. And in early 1988, a three-judge federal court struck down the redistricting plan for the Massachusetts House of Representatives, finding “extreme, pervasive and substantial deviations” among the legislative districts, though rejecting the Lawyers' Committee assertion that the evidence also established the undercounting of minority voters in the census figures.

The Boston Lawyers' Committee has been at the forefront of the legal struggle for equal opportunity in public employment in the Commonwealth. Dozens of class actions have been litigated against police, fire, and public works departments, culminating in the institution of numerous decrees requiring the integration of minorities and women in all ranks of these agencies. A 1974 suit against the City of Cambridge resulted in the promotion of that police department's first three black sergeants, and a subsequent action against Boston resulted in a consent judgment requiring the validation of promotional exams and the establishment of goals and timetables for the advancement of minority officers. The decision of the First Circuit Court of Appeals in DeGrace v. Rumsfeld2 an action against the United States Navy on behalf of a black civilian firefighter terminated from his position at the South Weymouth Air Station, defined the obligations of employers to maintain a work environment free from racial hostility and harassment. In 1983 the Lawyers' Committee successfully defended against a reverse discrimination challenge brought by white officers to an injunction protecting minorities from last-hired, first-fired layoffs in the Boston Police and Fire Departments, thus protecting the substantial gains that minorities had made as a result of previous court decrees.

One of the Committee's few matters in the private sector resulted in a significant precedent from the Massachusetts Supreme Judicial Court. A major dry cleaning company fired a black truck driver in September 1975 after he reported having been stoned by white youths while on his route in South Boston. The company contended in court that it had the right to replace the driver with a white person in order to protect him and the truck from the danger of racial violence. The Court ruled in Sarni Cleaners v. Cooke3 that such violence cannot justify unilateral employer action limiting the opportunities of minority persons, thus requiring employers and law enforcement officials to protect, rather than persecute, victims of racially motivated intimidation.

In the housing and urban development area, the Boston Lawyers' Committee has successfully litigated several class actions protecting the rights of poor and minority residents under a variety of federal programs. In a 1975 decision, Judge W. Arthur Garrity ruled in favor of several community organizations in an action challenging the Boston Redevelopment Authority's failure to properly implement citizen participation requirements in the Fenway Urban Renewal Project, and ordered that open elections be held to seat resident members of the Project Area Committee. In 1983 the Committee succeeded in demonstrating in court that the U.S. Department of Housing and Urban Development had systematically failed to enforce its own civil rights regulations when distributing tens of millions of dollars in funds to the City of Boston, and appropriate relief was sought with regard to past and future federal monies.

The Lawyers' Committee has devoted much energy to the problem of residential segregation. Over the years it has handled
dozens of fair housing cases against realty agencies, landlords, and homeowners in both Boston and the suburbs. In order to increase these endeavors, the Committee has successfully sought funding for a comprehensive fair housing testing and litigation project that will go into operation shortly.

The long-standing patterns of ethnic exclusivity in Boston’s neighborhoods, exacerbated by the tensions surrounding the school desegregation process, exploded in the mid-1970s in an ominous increase in violence against minorities. The savage beating of black attorney Ted Landsmark in front of City Hall by white youths armed with an American flag was captured on film and flashed across the national media, but it represented only the tip of an iceberg. Minorities could not safely travel through entire sections of the city. Those brave black families who dared move into white neighborhoods found themselves under siege, the victims of assaults, nightly rock throwing, racial epithets, threats, and even gunfire. Law enforcement officials and politicians stood by, unable or unwilling to take decisive action to protect minorities and apprehend the perpetrators. Finally, under pressure from a coalition of concerned groups including the Lawyers’ Committee, the Boston police established a Community Disorder Unit to crack down on racial violence and send out the message that it would no longer be tolerated. Similar efforts at "friendly persuasion" by the same groups resulted in the drafting and passage of the Massachusetts Civil Rights Act, which has proven to be a highly effective weapon in the hands of the Attorney General as well as private counsel to punish and deter racial and ethnic violence.

Recognizing the need to monitor and supplement these new public efforts, the Committee established in 1982 a special Project to Combat Racial Violence. The Project, utilizing the model of staff counsel working with private attorneys from the participating firms, quickly became a high-visibility operation providing legal representation in both criminal and civil matters to victims of racial violence. Black, Hispanic, and Asian families, subjected to intimidation by their neighbors in Hyde Park, Dorchester, and other troubled sections of Boston, now had a place to turn for aggressive counsel dedicated to protecting their right to live in the neighborhood of their choice.

When the new public interest law office was created in 1973, the turbulence of the coming years could probably not have been foreseen. But the institution that was set up as the Lawyers’ Committee for Civil Rights Under Law of the Boston Bar Association could not have been better tailored to fit the compelling needs of Boston’s minority groups. At a time when the legal profession is not always held in the highest esteem by the general public, the Lawyers’ Committee stands as a model of selfless achievement and constructive community service by the organized bar.

NOTES
1. 614 F.2d 796 (1st Cir. 1980)

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The Lawyers' Committee for Civil Rights Under Law was established in 1968 to combat race and national origin discrimination in Housing, Employment, Municipal Services and Education. In 1982 a special Project To Combat Racial Violence was established.

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