The Boston Lawyers’ Committee for Civil Rights Under Law: The First Fifty Years

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The Boston Lawyers’ Committee for Civil Rights Under Law: The First Fifty Years

By Mark S. Brodin

Introduction

Oliver Wendell Holmes Jr. thought that a person “should share the passion and action of his time at peril of being judged not to have lived.” As a thrice-wounded veteran of the Civil War, influential legal philosopher, chief justice of the Supreme Judicial Court, and later an associate justice of the Supreme Court of the United States, Holmes certainly practiced what he preached. He was not alone. Massachusetts lawyers have a long tradition of pro bono public service and commitment to the greater good of our society. John Adams set an early example, risking his reputation and his future while answering one of the highest calls of the lawyer’s duty, defending the unpopular client, when he defended British soldiers in the Boston Massacre trials. Adams’ primary authorship of the Massachusetts Constitution of 1780 was influential in formulating the Constitution of the United States, and creating an independent judiciary. Rufus Choate famously used his own eloquence to help preserve our independent judiciary. John Quincy Adams and others actively worked against slavery and racial injustice. Louis Brandeis brought his immense talents to bear in fighting for economic justice for our citizens and against large corporate monopolies. Felix Frankfurter, then a Harvard Law School professor, was a leader of the international outcry against the injustice of Massachusetts’ execution of Italian immigrants in the Sacco-Vanzetti case. So, it is no surprise that John F. Kennedy, a president steeped in Massachusetts history, reached out to the practicing bar to involve it in what he saw as a moral and legal crisis “as old as the scriptures and as clear as the American constitution.” In 1963, only months before his assassination, President Kennedy convened a meeting of 244 of the nation’s leading lawyers at the White House, seeking their active participation in the protection of civil rights under the law. At the
time, defiant southern governors were blocking the entry of black students to state universities, sheriffs were brutally putting down nonviolent protests with howling police dogs and firehoses, black churches were being bombed, and Freedom Riders were suffering pitiless beatings. In response to President Kennedy’s call to action, the national Lawyers’ Committee for Civil Rights was formed later that same year with the aim of activating the pro bono resources of the private bar in the struggle for racial equality and justice.

5. See 2 Mass. L. Q. 220 (1917) (reprinting Choate’s speech to the 1853 Constitutional Convention on the occasion of the dedication of the statue in his honor in what is now the John Adams Courthouse).
11. Id.
THE FOUNDING OF THE BOSTON LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW

A distinguished group of Boston lawyers answered the call when they created the first local affiliate of the national Lawyers’ Committee for Civil Rights in 1968, with funding from the Ford Foundation and the city’s major law firms. In 1973, the Boston affiliate secured the sponsorship of the Boston Bar Association (BBA), and became the Lawyers’ Committee for Civil Rights of the Boston Bar Association (LCCCR, Lawyers’ Committee or Committee). BBA leaders Carl Sapers and John Perkins declared:

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 founding year of the Boston LCCR was one of the most tumultuous and consequential in the history of the American Republic. In February 1968, the Kerner Commission (the National Advisory Commission on Civil Disorders) issued its report concluding famously that the nation was fast becoming two Americas — “one black, one white — separate and unequal.” The struggle for civil rights and equal justice was, the report documented, in no way limited to the South. President Kennedy’s vision of enlisting a mobilized private bar to join the fight for equal justice had come home to Massachusetts, and there was plenty of work to be done here, as even a brief review of the Boston Committee’s activities over the past 50 years amply demonstrates.


15. Id.


19. Id. at 480-82.

Over the years, the Committee has carried on its tradition of defending equal access to education. This has included successful litigation in Holyoke, Lowell, Cambridge, Northampton, Amherst and other districts to enforce bilingual teaching and desegregation requirements. The LCCR also has tackled the difficult issue of resource disparities. For example, in *McDuffy v. Secretary of Executive Office of Education*, the Supreme Judicial Court (SJC) struck down Massachusetts’ system of school financing that relied on local property taxes, and thus resulted in gross differences between poor and wealthy districts. Committee lawyers filed amicus briefs in the United States Supreme Court in *Grutter v. Bollinger* in support of affirmative action, and the Court of Appeals for the First Circuit in defense of Lynn’s voluntary school desegregation plan. The LCCR also has successfully sued to require districts to fund residential placements for students with special needs. All of these cases have achieved favorable results for equal educational opportunities.

### Battling Racial Violence

When Judge Garrity issued his remedial order requiring the busing of school children to achieve racial balance, violent resistance exploded. Threats against Judge Garrity led to the United States Marshals Service providing him with around-the-clock protection, and black school children in Boston had to be escorted to school by tactical police officers in riot gear. The ugly vitriol was poignantly captured in Stanley Forman’s Pulitzer Prize-winning photograph of Ted Landsmark, a young black professional, speared in the face with an American flag wielded by anti-busing protestors in front of City Hall. Similar racial confrontations erupted at schools and elsewhere.

In response to such widespread violence, the Lawyers’ Committee joined with other organizations in requesting that the Boston Police Department create a Community Disorders Unit (CDU). Despite hundreds of racially motivated crimes in the mid-to-late 1970s, including multiple fatal attacks, the department had often been reluctant to investigate these incidents. The CDU, under commander (later police commissioner) Francis “Mickey” Roache, was credited with ushering in a long-overdue change in police response to such cases. The protocols became a national model for what is now known as community policing.

To further buttress these enforcement efforts, the LCCR and other groups encouraged Attorney General Francis Bellotti, and his Civil Rights Division head L. Scott Harshbarger, to propose the Massachusetts Civil Rights Act (MCRA). Ultimately enacted in 1979, the law significantly expanded the protections available under the parallel federal anti-discrimination law. Thereafter, in 1982, the LCCR established its Project to Combat Racial Violence designed to advance the MCRA’s commitment to provide legal representation and support in both civil and criminal matters to targets of racial violence.

The LCCR also tackled the difficult issue, much at the center of public debate in the past few years, of disparate police violence against minorities. Since its inception, the Committee has represented victims of police abuse. For example, in 2018, the Committee filed a federal complaint on behalf of the mother of a black man with no criminal record or history of violence who was shot and killed by a Boston police officer in the doorway of the family apartment.

### Housing Discrimination

The LCCR’s reach has extended beyond the most direct consequences of racial discrimination to its root causes. In many respects, residential segregation is the foundational ill from which much of the inequality in American society flows. Accordingly, Boston’s LCCR, from its inception, has provided leadership in combating discrimination in housing. For example, it offered representation to minority families seeking to integrate longtime white enclaves, litigating individual and class actions on their behalf against the Boston, East Boston, Somerville and Fall River housing authorities, as well as private landlords and realtors. In 1996, the Committee filed suit on behalf of tenants of color charging the Boston Housing Authority with a failure to address racial violence over a period of decades. The case resulted in a $1.5 million settlement, and the adoption of meaningful policies to protect minorities, including a “zero-tolerance policy” for racial harassment.

27. *Coleman v. City of Boston*, Civ. Action No. 18-10646 (D. Mass. 2018). The plaintiff had called 911 to seek medical assistance for her mentally disabled son, but a police officer dispatched with the emergency medical technicians (EMT) shot him twice in the abdomen, claiming he was threatened by the victim with a knife (a matter hotly disputed by his mother). The lawsuit challenges the practice of requiring police to accompany EMTs on mental distress calls, as well as the lack of adequate training of officers in this regard. A *Boston Globe* investigation revealed that of the 65 persons fatally shot by police in Massachusetts in recent years, nearly half were suicidal or showed clear signs of mental illness. Yet only one in five police officers has received training to deal with such situations — a tragic but not atypical story across the country.
Similarly, in 1978, the LCCR challenged the persistent failure to expend federal housing funds in a non-discriminatory manner. The case was settled a decade later (under the threat of the cutoff of at least $75 million in federal aid) with a historic decree desegregating Boston’s housing projects after many years of explicitly race-based assignment policies. Now placements would be made randomly from a citywide list, and minority families that were victims of discriminatory past practices were given first preference. Extending beyond Boston proper, the LCCR oversaw the establishment of a fair housing panel in the mid-1970s to provide individual representation to families experiencing housing discrimination in surrounding cities and towns. Several successful federal suits were brought, including two against large real estate brokerage companies in Belmont and Everett.

**Employment Discrimination**

The Committee also has provided leadership in challenging discrimination in the workplace. For example, *DeGrace v. Rumsfeld* exposed the dark underbelly of racial hostility at the United States Naval Air Station in South Weymouth (NASSW). A mere 12 miles from Boston, and with a civilian workforce in the hundreds, NASSW employed only a tiny handful of minority workers, including the named plaintiff, Bobby DeGrace, the lone black firefighter in a 50-person unit. DeGrace was subjected to persistent harassment, including death threats, from his fellow firefighters. Boston’s LCCR brought suit in 1976, charging naval authorities with ignoring and condoning discriminatory and abusive misconduct, and ultimately secured a federal court decision that the NASSW was “infected with pervasive racism” that was “obvious to the supervisory personnel on the base”; and the court ordered appropriate remedies. The case has become a cornerstone in the development of federal anti-harassment law in the workplace.

In *Sarni Original Dry Cleaners v. Cooke*, the LCCR sued on behalf of a black truck driver whose daily route took him to South Boston in the mid-1970s. The LCCR argued that his race, and the animus it occasioned in the white enclave, was the reason for his termination from the largest dry-cleaning company in Boston. The final decision by the SJC was a widely cited civil rights victory that rejected the argument that risk of racial violence by third parties could justify adverse action against an employee or provide a bona fide occupational qualification for racially discriminatory hiring. The SJC cited another court’s observation that it would be “totally anomalous” to allow the very prejudices anti-discrimination laws are directed against to excuse discriminatory practices by an employer.

**Affirmative Action**

The LCCR has consistently challenged discriminatory police hiring and promotional practices that deprive qualified minorities of employment opportunities, and their communities of diverse representation among the police that patrol their streets. Litigation over the years has targeted the Boston, Cambridge, Salem and Barnstable police departments on behalf of black and Latino entry-level applicants, as well as officers seeking promotion, resulting in the first nonwhite sergeants in each of these departments. The Lawyers’ Committee also took over monitoring the consent decrees in the pioneering *Castro v. Beecher* class action that successfully challenged the discriminatory state civil service exam. The consent decrees mandate minority hiring preferences until each police (and, as a result of later litigation, each fire) department reaches demographic parity with its community. In 1983, the Lawyers’ Committee successfully defended these gains against a reverse discrimination challenge to the protection of incumbent minorities vulnerable to last-hired-first-fired layoffs.

The LCCR also participated in a 2006 case against the city of Lynn challenging discriminatory police and firefighter civil service exams that led to a settlement of back pay and jobs to 66 minority candidates. In 2014, the LCCR won a significant victory in the First Circuit Court of Appeals when the court ruled that the plaintiffs who challenged the Boston Police Department’s use of a drug test had established a prima facie case of a racially disparate impact under Title VII of the Civil Rights Act. A 2016 action compelled the Boston Police Department to release records concerning the racial impact of its employment practices. LCCR’s actions are not limited to court filings; along with other civil rights groups, it sponsored a 2017 community forum on police and fire diversity at the Dorchester headquarters of the Massachusetts Association of Minority Law Enforcement Officers Inc., which spurred further efforts toward equal employment opportunity.

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34. *Id.* at 799-800.
35. *Id.* at 729.
36. *Id.* at 612.
38. *Id.* at 612.
39. *Id.* at 617.
42. *Id.* at 759.
45. Jones v. City of Boston, 752 F.3d 38 (1st Cir. 2014).
46. Jones v. City of Boston, 845 F.3d 28 (1st Cir. 2016).
CIVIL RIGHTS ACT ENFORCEMENT

Since 1968, the Lawyers’ Committee has been a relentless enforcer of Title VI of the Civil Rights Act of 1964, which forbids the disbursement of federal funds to any program or activity engaging in illegal discrimination. Funds flowing through the Department of Housing and Urban Development, Revenue Sharing, Law Enforcement Assistance Administration, Department of Commerce, and Community Development Block Grants have all been subjects of LCCR litigation.47 A preliminary injunction stalled the construction of a new police station in Barnstable until the resolution of an LCCR case challenging promotion practices. A victory in a class action against the Boston Redevelopment Authority implemented the citizen participation requirements connected to the massive Fenway Urban Renewal Project, giving community groups an important voice in its direction. Other litigation has redirected Seaport Development linkage payments from South Boston to more diverse neighborhoods.48 ‘The Lawyers’ Committee also submitted an amicus brief defending a public housing tenants’ union sued by a major Boston landlord claiming that such concerted action constituted an illegal conspiracy to deprive him of his property.49

Voting Rights

Recognizing the vital importance of protecting voting rights, the Lawyers’ Committee filed an amicus brief in an early challenge to Boston’s at-large scheme for selecting city councilors, which effectively disenfranchised minority communities.50 Though unsuccessful, the case prompted legislative changes, and in 1983 the Committee prevailed in an action challenging the resulting redistricting plan.51 This decision enforced the rule of “one-person, one vote” and led to increased racial diversity on the Boston City Council. In another voting rights case, a federal district court invalidated the 1985 redistricting plan for the state House of Representatives, finding “extreme, pervasive and substantial deviations” from fair representation, and again opening opportunities for minority candidates.52 In 2001, the LCCR obtained a federal court injunction to prevent the city of Lawrence from implementing a voter identification requirement that would have discouraged Latino voting.53 In 2002, the Lawyers’ Committee filed an amicus brief with the SJC to protect several majority black state House districts.54

Setting an Example

In the Committee’s early years, a small professional staff, located in a suite of offices in Park Square, would prepare projects and cases, and then enlist a local law firm’s pro bono involvement. Over the years, the Committee has spun off an impressive array of affiliated entities with cognate social justice missions. In the beginning, it housed the Urban Legal Laboratory of Boston College Law School, which assigned a faculty member and full-time student interns to the work of the Committee, in an early collaboration between the bar and the law schools on clinical education. The Committee was instrumental in establishing the Volunteer Lawyers Project. It also has spun off the Fair Housing Project of Greater Boston and the Prisoners’ Rights Project (now Massachusetts Correctional Legal Services).

In 2001, the LCCR embarked on a significant transition, expanding its mandate to include the Economic Justice Project, and later changing its name to the Lawyers’ Committee for Civil Rights and Economic Justice (LCCREJ). Harking back to the Kerner Commission’s warning of two separate and unequal Americas, this change reflected the fact that the civil rights struggle always has been intimately tied to the stark reality of economic inequality. The Economic Justice Project annually connects more than 250 entrepreneurs with free legal and business support through initiatives such as BizGrow, a small business accelerator.55

In its corporate documents, the LCCR expands on the ambitious goals for bar activation set by President Kennedy in 1963:

47. See, e.g., N.A.A.C.P. v. Secretary of Housing and Urban Development, 817 F.2d 149 (1st Cir. 1987) (federal housing funds).
49. Many of these matters were resolved with grants of preliminary injunctions and so published opinions are not available.

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Specifically, the purposes of the Corporation are to provide legal representation to individuals who are victims of discrimination, harassment or violence based upon race or national origin or to assist such individuals in obtaining adequate legal representation; to develop legal strategies to address racial violence, housing and employment discrimination and economic development activities affecting communities of color in a systematic and comprehensive manner; to increase public understanding and awareness of civil rights and the judicial and legal processes involved in civil rights controversies; to gather and transmit to the appropriate governmental bodies and to the bar pertinent facts bearing upon civil rights conditions in the area served by the Corporation; to encourage and assist local citizens to solve civil rights problems arising in their own communities…

**The Path Ahead**

The Boston office has grown to include a litigation director, education project director, economic justice project director, health disparities director, two staff attorneys, a paralegal, and several fellows and interns. Under its energetic executive director, Iván Espinoza-Madrigal, the newly rebranded Lawyers for Civil Rights has continued past causes and thrown itself into the new challenges of our day surrounding immigration policies.

Recent suits have been filed against a prominent national steakhouse chain to protect Latina workers from pervasive sex harassment; against Boston Latin School for failure to address racial harassment of students; and against Amazon on behalf of minority drivers who were summarily terminated pursuant to a newly imposed background check policy that dredged up outdated minor offenses. The Committee’s intervention in a case involving charter school enrollment caps has helped preserve vital resources for traditional public schools.

Throughout its history, the Boston Lawyers’ Committee has steadily continued to expand its mission, engaging in litigation and advocacy in the areas of immigrants’ rights, LGBT equality, racially disparate discipline in public schools, environmental justice, and economic opportunities for low-wage workers and minority entrepreneurs. Always at the cutting edge of civil rights protection, the LCCR has recently filed suits against the Trump administration challenging the targeting of Chelsea and other “sanctuary cities” for termination of federal funds, seeking to prevent Immigration and Customs Enforcement officers from arresting immigrants when they appear in courthouses on unrelated matters (which, the suit alleges, puts “access to justice in the Commonwealth under siege”); and trying to save the Temporary Protected Status (TPS) humanitarian program for Salvadoran, Haitian and Honduran immigrants following natural disasters in those countries. In another recent immigration case, the Lawyers’ Committee joined forces with WilmerHale to sue federal officials on behalf of a mother forcibly separated from her 9-year-old child at the southern border as part of the administration’s harsh asylum policy.

**Conclusion**

From his experience in the Civil War, Oliver Wendell Holmes Jr. learned at the outset that “life is a profound and passionate thing…. But, above all, we have learned that... the one and only success which it is [ours] to command is to bring to [our] work a mighty heart.” Holmes believed fervently that no profession had higher standards than lawyers:

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65. Oliver Wendell Holmes Jr., Memorial Day Address (May 30, 1884) reprinted in Oliver Wendell Holmes, Jr. Speeches 1, 11 (1934).

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And what a profession it is! ... Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one’s soul? In what other does one plunge so deep in the stream of life – so share its passions, its battles, its despair, its triumphs, both as witness and actor?66

Since 1968, the Boston Lawyers’ Committee for Civil Rights, its dedicated and talented attorneys, and the many committed lawyers and law firms who have contributed their skills to its causes, have been fully immersed in the passions and actions of their times. Massachusetts has benefited greatly from their efforts. The author is proud to have participated in the journey.

President Kennedy’s vision of an activated private bar deeply engaged in the struggle for civil rights and equal justice is as crucial as ever. The Lawyers’ Committee will continue to work for the fulfillment of that prophetic vision in the years to come. The long tradition of Massachusetts lawyers working to protect liberty and freedom, provide pro bono public service, and strive for the greater good of our society bodes well for continued success.

66. Oliver Wendell Holmes, Jr., The Law (February 5, 1885) reprinted in 1 Oliver Wendell Holmes, Jr. Speeches 16-17 (1934).