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The Lawyers Committee For Civil Rights and Economic Justice Turns Fifty—A Retrospective

Mark S. Brodin

Boston College Law School, brodin@bc.edu

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Lawyers for Civil Rights

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The logo for Lawyers for Civil Rights Boston is displayed on a black rectangular background. The text "LAWYERS FOR CIVIL RIGHTS BOSTON" is written in a bold, orange, sans-serif font, stacked in three lines. A thin vertical orange line is positioned to the left of the text.

**LAWYERS FOR
CIVIL RIGHTS
BOSTON**

The Lawyers Committee For Civil Rights and Economic Justice Turns Fifty—A Retrospective

Events

Mark S. Brodin

Professor and Michael & Helen Lee Distinguished Scholar at Boston College Law School.

Prof. Brodin is also a former staff attorney and member of Steering Committee of Lawyers for Civil Rights.

The year 1968 was one of the most tumultuous, and consequential, in the history of our Republic. It began with the Tet offensive, putting the lie to the Government's rosy picture of the Vietnam debacle and ultimately leading to President Lyndon Johnson's withdrawal in March from the pursuit of another Term in office. April saw the assassination of Rev. Dr. Martin Luther King Jr. in Memphis, where he was supporting the sanitation workers' strike in anticipation of his Poor People's Campaign in Washington. An outpouring of grief and rage exploded in our cities, and a profound sadness settled across the globe. With June came the second shocking assassination—Robert F. Kennedy—upon his victory in the California primary, which might have catapulted him to a successful run for the Presidency as an anti-Vietnam War candidate with an aggressive anti-poverty agenda.

Then Chicago was torn apart in August as the Democrats held their doomed convention that would nominate Vice President Hubert Humphrey, who stubbornly refused to disassociate himself from the most unpopular war in our history. Street protests (the "Days of Rage") engulfed the city and were brutally put down by the Chicago Police in what would later be acknowledged was a "police riot."

Richard M. Nixon brilliantly exploited the glaring racial and class divides to be elected in November on a thinly-disguised platform promising restoration of "law and order" (the opening act of the era of dog whistle politics), and with a "secret plan" to end the Vietnam conflict—which somehow took more than five years to be implemented.

In the midst of this chaos, the Kerner Commission (the National Advisory Commission on Civil Disorders) issued its monumental Report in February 1968. Ranking with De Tocqueville's *Democracy in America* (1835) and Gunnar Myrdal's *An American Dilemma: The Negro Problem and Modern Democracy* (1944) in its profound insights into our society's inequalities, the Kerner Commission concluded that we were fast becoming two America's—"one black, one white—separate and unequal." Shocking to many, including liberals who had patted themselves on the back after the successful enactment of civil rights legislation just years before, the Kerner Commission did not blame inner city residents for the violence that was enveloping their communities, but asserted instead: "What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."

Auspiciously, 1968 also witnessed the launch in Boston of the Lawyers' Committee for Civil Rights. Months before his assassination, in June 1963, President John F. Kennedy convened a meeting at the White House of two-hundred and forty-four of the nation's leading lawyers to urge them to become involved in what had emerged as a moral and legal civil rights crisis—defiant southern governors blocking the entry of black students to state universities, sheriffs brutally putting down non-violent protests with howling police dogs and firehoses, bombings of black churches, and pitiless beatings of Freedom Riders. The Lawyers' Committee for Civil Rights Under Law was formed in response, with the design of activating the pro bono resources of the private bar in the struggle for racial equality and justice.

Five years later, a highly distinguished group of Boston lawyers signed on, creating the Boston affiliate with funding from the Ford Foundation and the city's major law firms. The initiative represented an acknowledgement of Malcolm X's observation that "if you're south of the Canadian border, you're in the South." The "busing crisis" of the 1970s would soon confirm that awful truth, as the city that was once the fount of the Emancipation Movement was forced to confront its own racial hostilities and discord. John F. Kennedy's vision of a mobilized private bar had come home to his own birthplace.

In 1973 the office secured the sponsorship of the Boston Bar Association. Bar leaders Carl Sapers and John Perkins proudly announced:

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 Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association began with a small professional staff that would prepare projects and cases and then enlist a firm's pro bono involvement and resources. An early concern focused on the glaring racial and economic disparities in the criminal justice system, documented in the Committee's publication of *The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston* (the "Orange Book"), a ground-breaking empirical study prepared from extensive court-watching and data compilation. Its recommendations became the blueprint for reform in the decades that followed: elimination of the outdated and problematic trial de novo system, which invested unreviewable discretion in local district court judges; elimination of private bail bondsmen; adoption of uniform procedural rules; and expansion of the public defender system.

Another early focus was the transparently segregated state of Boston's public schools, first challenged (unsuccessfully) in the 1850 case of *Roberts v. City of Boston*, brought on behalf of a black girl forced to walk a distance to an under-resourced all-black common school while passing white schools in her own neighborhood. The pressure to desegregate rose to a pitch in the 1960s, but the School Committee and allied politicians stubbornly resisted all efforts. Left with no other option, *Morgan v. Hennigan* was filed by the Lawyers Committee in 1972 with the firm of Foley, Hoag & Eliot as co-counsel with the Harvard Center for Law and Education. The evidence exposed the School Committee's policies of deliberately and systematically assigning students and teachers to racially identifiable schools, and locating new schools with the obvious purpose of maintaining segregation.

U.S. District Judge W. Arthur Garrity reached— as the First Circuit Court of Appeals would later affirm was the *only* possible decision he could— that Boston was running a dual system, one for white children and another, far inferior, for black children. The *Morgan* decision was a defining moment in the movement to make *Brown v. Board of Education's* mandate a reality in the North as well as the South. But when Judge Garrity issued his remedial order requiring the busing of school children to achieve racial balance, to take effect at the beginning of the 1974 school year, stubborn and violent resistance exploded. Opportunistic politicians fanned the flames of racial discord. Threats against Judge Garrity himself necessitated around-the-clock personal protection by the U.S. Marshall's Service.

The ugly vitriol was brilliantly 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, in full view of several city councilors peering out the windows who did nothing to come to Landsmark's aid.

The shining "City on the Hill" had become the place where black school children had to be escorted by tactical police officers in riot gear, reminiscent of the Little Rock Nine and Ruby Bridges.

A low point was reached when Darryl Williams, a black high school student whose football

team was playing against Charlestown High on its field, was paralyzed when hit with a bullet fired by white teenagers from a nearby rooftop. The shooter and a companion, dubiously claiming accident, were allowed to plead guilty to assault and battery with a dangerous weapon, and served only modest prison time.

Racial confrontations regularly erupted at schools and in white turf-conscious enclaves like Carson Beach in South Boston. Boston's image to the world was indelibly altered.

In response to the violence as well as the long-standing patterns of racial exclusivity in neighborhoods like South Boston and Charlestown, the Lawyers' Committee provided representation to brave minority families seeking to integrate the 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 an action on behalf of tenants of color charging the Boston Housing Authority with failure to address racial violence over the years resulted in a \$1.5 million settlement and adoption of meaningful policies to protect minorities, including a "zero-tolerance policy" for racial harassment. Members of the "Junior KKK" (Ku Klux Klan), who had been terrorizing black families in East Boston, entered into a consent decree with victims in a federal action holding them accountable.

Together with other groups, the Lawyers' Committee persuaded the Boston Police Department to create its Community Disorders Unit (CDU), and the Attorney General to propose the Massachusetts Civil Rights Act, enacted in 1979, significantly expanding the protections available under parallel federal provisions. Despite the hundreds of racially motivated incidents in the mid- to late-1970s, some fatal, police had often been reluctant to investigate, and prosecutors to bring charges. The CDU, under commander (later police commissioner) Francis "Mickey" Roache, is credited with ushering in a long overdue change in police response to such cases. The protocols anticipated what is now known as community policing.

And in 1982 the Lawyers' Committee's Project to Combat Racial Violence formalized the commitment to integrated neighborhoods and housing, providing legal representation and support in both civil and criminal matters to targets of racial violence.

The expansive Naval Air Station in South Weymouth (NASSW) was only twelve miles from Boston, but its civilian workforce in the hundreds included only a handful of minorities. Among them was Bobby DeGrace, the lone black firefighter in the 50-man unit. *DeGrace v. Rumsfeld* (Donald Rumsfeld's first tenure as Secretary of Defense) exposed the dark underbelly of racial hostility at NASSW, where DeGrace was subjected to abusive harassment and then death threats from his co-workers, who had more than enough opportunity to carry them out in the dangerous endeavor of fighting fires. Charging the naval authorities in 1976 with ignoring and condoning this heinous conduct, the Lawyers' Committee secured a federal court decision condemning the fire department as "infected

with pervasive racism” which was “obvious to the supervisory personnel on the base,” and ordering appropriate remedies. The case has become a cornerstone in the development of federal anti-harassment law.

The potential for racial violence against a black truck driver whose daily route took him to tense South Boston in the mid-1970s became the pretext for his termination from the largest dry-cleaning company in Boston. After a favorable ruling from the Massachusetts Commission Against Discrimination (MCAD), the defendant appealed all the way to the Supreme Judicial Court. The result was a widely-cited landmark civil rights victory (*Sarni Cleaners v. Cooke*) establishing the proposition that the risk of racial violence by third parties cannot justify adverse action against the targeted employee, or a BFOQ (bono fide occupational qualification) for exclusively white hiring. It would be, the SJC observed, “totally anomalous” to allow the very prejudices anti-discrimination laws are directed against to excuse discriminatory practices by an employer.

The Lawyers’ Committee’s pioneering efforts in the education arena have also included successful litigation in Holyoke, Lowell, Cambridge, Northampton, Amherst, and other districts to enforce bilingual as well as desegregation requirements. And *McDuffy v. Robertson* ended in a ground-breaking 1993 decision striking down the state system of school financing that relied on local property taxes and thus resulted in gross disparities between wealthy and poorer districts.

Committee lawyers filed amicus briefs before the U.S. Supreme Court in *Grutter v. University of Michigan* in support of affirmative action, and in defense of Lynn’s voluntary school desegregation plan against a reverse discrimination challenge. Both cases achieved favorable results for equal educational opportunities. Actions have also been pursued to require districts to fund residential placements for students with special needs.

Residential segregation is the foundational ill from which so much inequality in our society flows, as documented by Richard Rothstein’s *The Color of Law*. *NAACP v. HUD & BHA*, filed in 1978, challenged the persistent failure to expend federal housing funds in a non-discriminatory manner, and was settled a decade later (under threat of a cutoff of at least \$75 million in federal aid) with an historic decree desegregating Boston’s housing projects after decades of explicitly race-based assignment policies. Now placements would be made randomly from a citywide list, and minority families that were victims of the past practice were given first preference. The process was, like the school desegregation order, met with fierce and sometimes violent resistance in certain neighborhoods.

Since 1968, the Lawyers’ Committee has been a principal 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 HUD, Revenue Sharing, Law Enforcement Assistance Administration, Department of Commerce, and Community Development Block Grants have all been subjects of Committee actions.

Extending its reach beyond Boston proper, a fair housing panel was formed in the mid-1970s to provide individual representation to families experiencing housing discrimination in the suburbs and surrounding towns. Several successful federal suits were brought, including two against large realty brokers in Belmont and Everett.

A Lawyers' Committee 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. Litigation has redirected Seaport Development linkage payments from South Boston to more diverse neighborhoods. Lawyers' Committee also appeared in an amicus capacity to defend 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 (reminiscent of early challenges to concerted labor activity).

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. Though unsuccessful, the case prompted legislative changes, and in 1983 the Committee prevailed in an action challenging the redistricting plan that resulted, enforcing "one-person, one vote" and finally bringing people of color onto the Council.

In another case, a three-judge 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. In 2002, the Lawyers' Committee filed an amicus brief at the Supreme Judicial Court to protect several majority black State house districts. And a 2001 federal court injunction issued in 2001 prevented the City of Lawrence from implementing a voter ID requirement that would have discouraged Latino voting.

Much of the attention over the years has been on discriminatory police hiring and promotional practices, depriving minorities of employment opportunities and their communities of representation in the ranks that patrol their streets. Litigation has been pursued against the Boston, Cambridge, Salem, and Barnstable police departments on behalf of black and Latino entry-level applicants and officers seeking promotion, resulting in the first non-white sergeants in each of these departments. The Lawyers' Committee took over the pioneering *Castro v. Beecher* class action, which had successfully challenged the discriminatory civil service exam and concluded with decrees (some of which are still in force) mandating minority preferences until each police and fire department reached 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.

Intervention in a 2006 case against the City of Lynn challenging discriminatory police and

firefighter civil service exams led to a settlement offering back pay and jobs to 66 minority candidates. A 2016 action compelled the Boston Police Department to release records concerning the racial impact of its employment practices. And a 2014 landmark victory in the First Circuit Court of Appeals ruled that the Plaintiffs who challenged the Boston Police Department's use of a hair drug test had established a *prima facie* case of a racially disparate impact under Title VII of the Civil Rights Act. The case was remanded to the District Court. With other civil rights groups, the Lawyers' Committee sponsored a Community Forum on Police and Fire Diversity in June, 2017, at the Dorchester headquarters of the Massachusetts Association of Minority Law Enforcement Officers, Inc.

Police violence against minorities was the spur of the urban disorders that raged in the inner cities in the 1960s. Since its inception, the Committee has represented victims of police abuse. In an early case, lawyers initiated a criminal complaint that resulted in a trial of two Boston officers for an unprovoked assault and battery on a black man returning to his home in the South End. Although acquitted, a subsequent federal civil rights action ended with a money settlement.

Most recently a federal complaint was filed 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. The plaintiff had called 911 to seek medical assistance for her mentally disabled son, but a police officer dispatched with the EMT's 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 EMT's 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 untypical story across the country.

In 2001, entering an expanded phase, the Committee created the Economic Justice Project, and later became the Lawyers' Committee for Civil Rights and Economic Justice, circling back to the Kerner Commission's warning of two separate and unequal Americas. In fact, the civil rights struggle has always been intimately tied to the stark reality of economic inequality—the 1963 March on Washington was “For Jobs and Freedom,” and Rev. Dr. Martin Luther King Jr. was killed in Memphis while supporting the sanitation workers' strike and organizing the Poor People's Campaign.

Under the dynamic and energetic leadership of Ivan Espinoza-Madrigo, the Lawyers' Committee now engages in cutting-edge 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 as well as minority entrepreneurs. Litigation has been brought against the Trump Administration challenging the targeting of Chelsea and other “sanctuary cities” for termination of federal funds, seeking to prevent ICE

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 to save the Temporary Protected Status (TPS) humanitarian program for Salvadoran, Haitian, and Honduran immigrants following natural disasters in those countries.

In the latter case, it is alleged that the trump Administration is pursuing “a racially discriminatory immigration agenda—one that the president has been astonishingly blunt about articulating.” Together with Congressman Jim McGovern and Somerville Mayor Joseph A. Curatone, representatives of the Lawyers’ Committee have traveled to El Salvador and Honduras on a mission to expose the violence and poverty driving migration of people from those countries. 250,000 beneficiaries of the program face deportation within 18 months.

On June 29, 2018, the Lawyers’ Committee staff and WilmerHale sued federal officials on behalf of a mother forcibly separated from her nine-year-old child at the southern border as part of the Trump Administration’s heartless policy. Plaintiff fled Brazil with her son to escape domestic violence from her abusive husband, and to avoid her child being forced into drug activity.

Suits have been filed against a prominent national steakhouse has been sued 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 had been summarily terminated pursuant to a newly-imposed background check policy dredging up outdated minor offenses. Intervention in an action in support of retaining the cap on charter schools has helped preserve vital resources for traditional public schools. And the Economic Justice project annually connects more than 250 entrepreneurs with free legal and business support through initiatives such a BizGrow, a small business accelerator.

Work of course continues in the traditional areas of voting rights, fair housing, affirmative action, and employment discrimination.

Over the years the Lawyers’ Committee has created and spun-off the Fair Housing Project of Greater Boston and the Prisoners’ Rights project (now Massachusetts Correctional Legal Services). The Committee was also instrumental in establishing the Volunteer Lawyers Project, and housed the Urban Legal Laboratory of Boston College Law School, which assigned full-time interns to the work of the Committee. The 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.

At this most perilous time in the nation’s history, with an Administration in Washington that has so little regard for the rule of law and the rights of minorities solidified over the past fifty-plus years, JFK’s vision for an activated private bar deeply engaged in the struggle for

equal justice is more crucial than ever. Oliver Wendell Holmes would exhort young lawyers to become immersed in the agonies of their times. Over the past fifty years, Lawyers' Committee attorneys have done just that.

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