

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW 1963-2008

By Charles T. Lester, Jr

Creation of the Committee. The Lawyers' Committee for Civil Rights Under Law was created at the request of President John F. Kennedy in the summer of 1963 following a meeting of 244 lawyers in the East Room of the White House. President Kennedy, Vice President Lyndon B. Johnson and Attorney General Robert F. Kennedy spoke at the conference and urged the lawyers to use their training and influence to move the struggle for the protection of civil rights from the streets to the courts. The 244 lawyers who attended were from throughout the United States and included, leaders of state bars and the ABA, and 50 African American lawyers. President Kennedy had held similar meetings with representatives of business, education, and the clergy, but the decision to call a meeting with the lawyers and the timing of the meeting was born of a sense of urgency about the absence of the organized bar in the civil rights movement.

During the summer of 1963 civil rights groups were demonstrating and taking other collective public actions to call attention to and to end discrimination and segregation in education, employment, voting participation and public accommodations throughout the South. Alabama Governor George Wallace had vowed to hold the line against court-ordered desegregation of the University of Alabama. The confrontation between the Justice Department and the United States Marshals and Governor Wallace was scheduled for June 11, 1963. Bernard Segal, a corporate attorney in Philadelphia (later a President of the ABA), after a comment from his wife about why there was no stance from the bar about the position taken by Governor Wallace, contacted a number of lawyers throughout the United States and prepared a statement critical of Governor Wallace's position. The statement was published as an advertisement in the Birmingham papers with a list of 53 lawyers who supported the statement, which called for elected officials to defer to the "rule of law." The statement received favorable editorial comment from the Birmingham papers and others. Burke Marshall and Louis Oberdorfer traveled with Attorney General Kennedy to the South to try to get a better understanding of the problems presented and as a result of the article contacted Mr. Segal to ask his help in developing a list of lawyers, including minority lawyers for the White House meeting. On June 21, President Kennedy asked Mr. Segal and Harrison Tweed of New York to chair the Lawyers' Committee for Civil Rights Under Law and to assemble a group of lawyers to carry forth its mission.

The Committee also received the support and endorsement of President Johnson who met with its leaders including Harrison Tweed, Bernard Segal, Lloyd Cutler, Cecil Burney, Berl Bernhard and John Doyle in May 1965. The objectives of the Committee were: to marshal the resources of the private bar, including its leadership for public policy advocacy; to educate the public and the bar on civil rights; to enlist the skills of lawyers as negotiators and mediators to help resolve disputes; and to provide pro bono legal assistance to victims of discrimination. The Committee thought of themselves as "missionaries to the bar" and it was only after unsuccessful efforts to involve lawyers in the South in the protection of civil rights that the Committee became more proactive. For many years the Committee considered itself to be a temporary organization. It initially resisted opening an office, working instead from the offices of its Co-Chairs, and was ambivalent about hiring an Executive Director and sufficient staff. Its co-chairs served simultaneous two-year non-staggered terms, and executive directors served very short terms. It

was only as the Committee matured that it realized that the nation's civil rights problems were more intractable and the solutions more long term.

1963-1973: Jackson, Mississippi, Cairo, Illinois, Southern Africa Project, and Founding of Local Lawyers' Committees. The Lawyers' Committee was always involved in public policy advocacy. President Kennedy introduced civil rights legislation, which ultimately became the Civil Rights Act of 1964 on June 19, 1963, two days prior to the meeting in the East Room. The Committee urged passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965.

The Committees' efforts in Jackson, Mississippi began in 1963 when a group of clergyman from the National Council of Churches working in Mississippi during the summer as civil rights organizers, requested legal assistance. Robert Lunney, a lawyer from a New York firm went to Mississippi and worked with the clergy, negotiating with local officials over permits and representing marchers and demonstrators when they were denied permits or when they were arrested. The National Council of Churches asked for additional Lawyers' Committee help in 1964 and the Committee opened an office staffed by 18 volunteers, serving two-week terms, from leading law firms in New York, Philadelphia and Washington. The initial focus for the volunteers was to encourage the Mississippi Bar and its lawyers to shoulder their responsibilities to represent blacks, but when those efforts failed, the volunteers went to work representing clients throughout Mississippi, mostly in criminal cases. The Mississippi office opened with full time staff on June 14, 1965 and shortly thereafter hundreds of demonstrators were arrested in Jackson for protesting restrictive voting bills that had been under consideration by the Mississippi Legislature. The Lawyers' Committee, the Legal Defense Fund, and LCDC collaborated in a Federal Court suit challenging the constitutionality of parade ordinances.

Over time, the Mississippi office made a major shift away from individual defensive representation to major impact cases, such as voting rights cases, particularly after Frank R. Parker joined the office in 1968. Also, the focus of legal service delivery shifted from staff and individual volunteer lawyers to the co-counsel relationship of participating law firms serving pro bono with staff lawyers. The work included important litigation dealing with voting rights, personal freedom, education, employment discrimination, prison reform, and jury selection. The Committee established the rights of blacks as a class, challenged discriminatory jury venires, changed the way the courts treated blacks, and helped to make Mississippi accountable to the rule of law.

The Committee, in response to the 1968 Report of the National Advisory Commission on Civil Disorder and Unrest following the assassinations of Dr. King and Senator Robert Kennedy, began its Urban Areas Project, which enlisted long term financial support from the Ford Foundation and other resources to organize and staff local lawyers committees in Atlanta, Beverly Hills/Los Angeles, Boston, Chicago, Cleveland, Indianapolis, Kansas City, Philadelphia, San Francisco and Washington ("the Locals"). The Locals were dynamic organizations supported by staff and hundreds of volunteer lawyers from major law firms in those cities. Not all of the Locals survived, but they all had substantial success with issues of discrimination in their communities. The Colorado Lawyers Committee for Civil Rights Under Law was opened in 1976 in Denver.

The Lawyers' Committee operated an office in Cairo, Illinois from 1969 to 1972 to address the violence against blacks in that city. The Cairo office lawyers were successful in obtaining several injunctions against police suppression of demonstrations. Lawyers who were working in the office observed gunfire, and blacks struck with bricks. One of the groups opposing the efforts to end discrimination organized a run on a local bank because a lawyer for the Lawyers' Committee was the bank's lawyer. The Committee had to contact corporate leaders and state officials to generate enough money to stave off the failure of the bank.

In 1967 and 1968, the Committee began providing assistance for human rights problems in the Union of South Africa. The initial efforts provided support to a hand full of South African lawyers brave enough to resist apartheid and represent political dissidents in court there. The Southern Africa Project continued for more than 30 years, up to and through the liberation of Namibia from South Africa's illegal occupation, and the end of apartheid in South Africa with the free and open elections in 1994.

Meanwhile, in 1969, the Supreme Court in *Alexander vs. Holmes County Board of Education* reversed the Fifth Circuit Court of Appeals and ruled that continued operation of segregated schools in Mississippi was no longer permissible. Louis Oberdorfer argued that case.

The Second Decade: 1973- 1983-National Trend Continues. The work of the Lawyers' Committee continued the trend set by the Urban Areas Project and became more national in scope with major matters in forums other than the South. Public policy continued as an important component of the work, and included affirmative positions on the extension of the Voting Rights Act in 1975 lead by Nicholas Katzenbach and Frank Parker, the 25-year extension of that Act in 1982, and on the Attorneys Fees Awards Act of 1976. Policy advocacy also included defensive work because the federal judiciary and federal administrations were more hostile to the protection of civil rights. This defensive advocacy urged defeat of proposed constitutional amendments to prevent bussing to desegregate public schools and sought to protect IRS rules that resulted from a Lawyers' Committee case (*Green v. Connally*), denying exemption to private schools that were segregated on the basis of race.

The Committee was active in school desegregation in Boston, employment discrimination in Houston, resisting a shipbuilding plant on the St. Johns River in Jacksonville, Florida. One of the most important cases handled by the Committee was *Claiborne Hardware Co. v. NAACP*. The case arose out of a boycott in Claiborne County Mississippi. Several businesses sued the NAACP and individuals in state court and obtained a large judgment that would have made the NAACP insolvent. Lawyers' Committee lawyers, represented the NAACP in the trial court, obtained stays in federal court, and Lloyd Cutler successfully argued in the U.S. Supreme Court that the judgment violated the First Amendment.

South Africa matters included contesting new U.S. routes sought by South Africa Airways -- for the Congressional Black Caucus and others (not successful); filing an action with the Customs Commission to block the import of coal from South Africa -- for the United Mine Workers and Alabama contending under a tariff preventing the importation of products produced with indentured labor -- which caused the repeal of criminal penalties for breach of labor contracts by blacks; assistance to attorneys defending officials of the Christian Institute accused

under the Suppression of Communism Act; providing Dean Bamberger as an observer for the “trial” of Rev. Sithole in Rhodesia; sending Dean Pollak to observe the inquest for the death of Steve Biko; the director of the Project to observe sedition trials, and Father Drinan to observe the trial of four Lutheran pastors, which resulted in the dismissal and reduction of charges

President Carter hosted a reception at the White House on the Fifteenth Anniversary of the founding of the Committee and praised it for its work. The Co-Chairs and William L. Robinson (the first long term executive director, 1979-1988) met with Attorney General William French Smith in 1981 to discuss civil rights enforcement and the extension of the Voting Rights Act.

The Committee had many success stories for its clients. In employment, the Committee successfully sued Western Electric, won a suit against the Civil Service Commission that successfully attacked the entrance exam - requiring the defendants to show that the test was job related, obtained a Supreme Court decision that federal employees were entitled to a trial de novo, obtained consent decrees against the mandatory maternity leave policies of Pan American and American Airlines, won a \$20 million suit against J.P. Stevens, obtained a consent decree against the General Services Administration and a consent decree with back pay for employees of fire and police departments in Houston, obtained back pay against Jefferson County, Alabama and the Federal Department of Energy. In voting, the Committee persuaded the Supreme Court to use Section 5 to eliminate potentially discriminatory voting procedures (*City of Port Arthur, Texas v. United States*) and successfully eliminated discriminatory multimember districts in Virginia (*Cosner v. Dalton*).

1983-1993 – Struggle at Home and Success in South Africa. The third decade provided challenges and opportunities at home and abroad. After nearly 20 years of operations in Jackson, Mississippi, the Committee closed the office in 1984, but not the work, which continued out of the national office. Committee representatives testified in opposition to the nomination of William Bradford Reynolds as Associate Attorney General, who was confirmed. The Committee formally opposed the nomination of William Lucas as Assistant Attorney General for Civil Rights, based on his lack of legal experience and knowledge of the basic civil rights laws. He was not confirmed. The Committee also made analyses of the record of three U.S. Supreme Court nominees, provided them to the Senate Judiciary Committee, opposed the nominations of Judge Robert Bork, who was not confirmed, took no position on the nomination of Justice David Souter, and opposed the nomination of Justice Clarence Thomas, who was confirmed.

In the policy area the Committee contributed to the development and passage of the Civil Rights Act of 1990, which was vetoed by President Bush and the Civil Rights Act of 1991, which the President signed and which was designed to correct six rulings by the Supreme Court that restricted employment discrimination claims. Leaders of the Committee met with Attorney General Thornburg to explore areas of collaboration and cooperation and communicated and worked effectively with John Dunne the Assistant Attorney General for Civil Rights who was confirmed after the Lucas nomination failed. Barbara Arnwine became the Executive Director in February of 1989 succeeding Bill Robinson, who left to become the first dean of the District of

Columbia Law School after 10 years of service. The Committee added separate Fair and Affordable Housing and Environmental Justice Projects to meet client needs.

The Southern Africa Project of the Lawyers' Committee was a key player in the successful evolution to majority rule in Namibia and South Africa.

Namibia. The Project initiated legal action in the Namibian courts that resulted in the release of 128 people known as "Cassinga Captives," who had been held for 6 years. In 1988 the Project began a study of human rights in Namibia to document the effect of the civil war during South African occupation of Namibia. While that study was underway, elections to select a constituent assembly to draft a constitution under UN Security Council Resolution 435 were scheduled for November 1, 1989. The Project sent its staff attorneys and consultants as monitors in May and organized a Commission for Independence composed of 31 prominent Americans to make one-week visits to observe the election process. Nearly 97% of 700,000 registered voters cast their ballot, 40% for the first time. The 72-person Assembly that was selected produced a constitution in 80 days. The first democratically elected government took office March 21, 1990.

South Africa. The Project endorsed the "Free South Africa Movement" and provided legal observers for daily demonstrations at the South African Embassy. Judge Nathaniel Jones, sent as an observer of proceedings in the South African Supreme Court against 16 people charged with treason, was arrested and charged with violation of an Emergency Order when in route to the funeral of a defense lawyer killed outside her home. The Project prepared a detailed analysis of the 1988 municipal elections in South Africa to outline the structural injustices in the process and explain their political and social context. The Project published a 53-page report to document 130 assassinations or disappearances of anti-apartheid workers to bring international pressure to stop government sanctioned death squads. The "Red Ribbon Campaign" instituted by the Project brought public attention to the death penalties of the "Sharpeville Six" and caused their commutation to long jail sentences. The Project funded legal assistance for defense of politically related cases, lawsuits challenging restriction orders on anti-apartheid activists, rent and housing cases, and representation of rent-boycotters in the townships. The Project prepared reports for Members of Congress and human rights groups when President de Klerk announced changes in the apartheid system and lobbied the State Department to keep the pressure on South Africa to live up to its promises.

The Project Director, Gay McDougall served on the welcoming committee for Nelson Mandela's trip to the United States and as the master of ceremonies at the event in Washington, DC. The Project funded legal representation at commissions of inquiry for the families of victims of shootings by police during a protest over rent, housing and employment at Songela Gate, and on the activities of death squads. The Project presented conferences and workshops on constitutional rights and self government as the time for open elections approached, including conferences on the right to counsel, gender equality, and open government. The Project launched The South Africa Voting Rights, Education and Monitoring Project to provide technical assistance to groups working to report violations to the Independent Electoral Commission. Nelson Mandela was elected president, and Gay McDougall was the only American who served on the Electoral Commission.

Major litigation success was achieved in voting rights where the Committee successfully challenged Mississippi congressional districts in *Brooks v. Winter* and allowed Mike Espy to become the first black congressman from Mississippi in 100 years; and successfully challenged municipal and county redistricting in Greenville, and Jackson, Mississippi, Annapolis, Maryland, and Petersburg, Virginia. The Committee also won or settled cases in Springfield, Danville, and Peoria, Illinois, in Pittsburgh, Pennsylvania, and Norfolk, Virginia (Affirmed in the Forth Circuit in *Collins v. City of Norfolk*) over at-large municipal elections and in Mississippi (*Martin v. Mabus*) over at-large election of state court judges, which resulted in the election of 8 black judges. The Voting Rights Project held a conference to celebrate the 25th Anniversary of the Voting Rights Act and a conference on redistricting after the 1990 census.

For the Employment Project success was achieved against adverse trends, as decisions of the Supreme Court and lower federal courts allowed reverse discrimination claims and the Justice Department changed positions in consent decrees. Some of the problem cases were dealt with in the Civil Rights Act of 1991. The Employment Project's work included direct representation, technical assistance to other employment lawyers and advocacy in amicus briefs. The project secured back pay for clients in litigation against the Mississippi State Employment Service, Travenol Laboratories, and the Sheriff's Department of Harris County, Texas. The Project has had more success in challenges to employment tests, including the Nassau County Police Department, and City of Buffalo.

In Fair Housing the Committee in cooperation with the Boston Committee settled litigation with the Boston Housing Authority for a class of 1,600 tenants, who were denied housing opportunities in predominately white neighborhoods. In another important case the Lawyers' Committee obtained a seizure order from a U.S. District Court judge for evidence of discrimination involving a decade old racial coding system, used to deny private apartment housing to 6,000 African American and Hispanic clients in Miami, securing a \$3.4 million settlement. (*Givens v. Hamlet Estates*).

1993-2003 – New Strategic Direction, Lawyers for One America, UN Conferences on Women and Against Racism. In 1993, the Committee celebrated its 30th Anniversary that included a reception at the White House hosted by President William Jefferson Clinton.

In the early 1990's with support from the Ford Foundation, the Lawyers' Committee expanded its law firm and board resources by initiatives in U.S. cities where it had limited or no support. It created the Lawyers' Committee for Civil Rights of Texas in San Antonio, the first new local affiliate in two decades. In Atlanta, it added board representation and organized a steering committee. With success in Atlanta it followed up with visits in Miami, Charlotte, Raleigh/Durham/Greensboro, New Orleans, St Louis, Minneapolis, Phoenix, Portland (Oregon), and Seattle. To assist in this national expansion, the Committee added Regional Vice-Chairs beginning with four and adding regions and vice-chairs within regions, bringing the total to 13 at present. This new position has been effective in the national expansion and has had the side benefit of providing the leadership training and opportunities such that six of the last seven co-chairs were regional vice-chairs. In 1995 imposing on Herbert Hansell to serve three years, the Committee moved the co-chairs to staggered two-year terms.

Under the leadership of Paul Saunders and Marc Fleischaker, with the support of the Executive Committee and major drafting efforts by the staff and Jack Londen, the Lawyers' Committee undertook a strategic planning process, which included the first national Board and Staff Retreat in 1997. The retreat produced in 1998 a seven-year Strategic Plan, which was instrumental in strengthening the Committee's capabilities to address the current and changed civil rights landscape. Among its new directions, the Plan recognized the need for the Committee to broaden its work in light of demographic changes in the United States, to strengthen its public policy capability, especially in media and public education, to seek more opportunities for pro bono transactional work, and to explore ways to expand its agenda to address the health care and criminal justice needs of our clients. Many aspects of the Strategic Plan were implemented in record time and a revised plan was adopted at a 2002 Board and Staff Retreat for the continued mission of the Committee.

The Lawyers' Committee, as a follow up to President Clinton's Race Initiative wrote the President and suggested that he issue a "Second Call" to the bar to promote diversity in the profession and pro bono work for communities of color. The Committee leadership worked with a number of organizations to develop a collaboration for a one-year effort, beginning with a meeting in the East Room of the White House in July 1999. The Committee supported and promoted the effort, which was known as the Lawyers for One America Collaboration.

In the 1990's, a rash of arson caused the burning of black churches at various locations mostly in the South. With the cooperation of the National Council of Churches, the NAACP, and the strong coordination of Arent Fox Kintner Plotkin & Kahn, the Committee mobilized 30 law firms to help congregations with insurance, construction, zoning and other issues in Florida, Georgia, Mississippi, New York, Texas, and Washington.

In the international arena, the Lawyers' Committee made important contributions to the U.N. Conference on Women in Beijing. It presented a seminal National Conference on African-American Women and the Law for 1,000 people in forums about the impact of dual discrimination of gender and race for women of color, and participated in the Non-Governmental Organization ("NGO") Forum in Beijing in August of 1995. The Committee presented a similar conference at Howard University Law School in 2000 as a prelude to the NGO Forum held in New York for the five-year review of the Declaration and Plan For Action of the Beijing Conference on Women. Lawyers' Committee representatives were also participants in the Forum. Committee representatives participated in planning conferences in Geneva and Santiago, Chile in preparation for the U.N. World Conference Against Racism, in Durban South Africa. The Lawyers' Committee presented a conference for NGO's in Washington in June 2001 to prepare their representatives for the conference, and Lawyers' Committee staff and Board members attended the conference in Durbin in August and September 2001. Committee representatives made contributions to the text of the forum reports and the Plan for Action.

The Lawyers' Committee has worked tirelessly to defend affirmative action in all phases of its work. It urged President Clinton to support affirmative action in federal procurement. It worked to meet and overcome the limits placed on programs by cases such as *Adarand Contractors, Inc. v. Pena* and *City of Richmond v. J.A. Corson, Co.* The Committee supported the affirmative action admission policies of institutions of higher learning with amicus briefs in

circuit courts of appeal and the Supreme Courts. It also was involved in the case preventing a confusing anti-affirmative action referendum in Florida with the support of former Judge and Board member Joseph Hatchett.

The Committee's policy activities included support for the Voter Registration Act of 1993 ("Motor Voter"), hate crime legislation, and pushing for a better version of the Helping America Vote Act of 2002. The Committee developed the framework for President Clinton's Executive Order on Environmental Justice. The Committee commented on proposed rules, such as the amendments to the Federal Rules of Civil Procedure for class actions, and the Community Reinvestment Act rules for financial institutions.

The Committee with the leadership of Board members Norman Redlich and Sidney Rosdeitcher and the support of many law firms prepared an extensive analysis of the trend in U.S. Supreme Court cases that has restricted the power of Congress to legislate in areas of importance to the civil rights community. The cases have protected state rights under the Tenth and Eleventh Amendments, eliminated the use of the Commerce Clause as a constitutional basis for abrogating a state's immunity, and limited the use of Section 5 of the Fourteenth Amendment to abrogate sovereign immunity and allow suit against states. The cases impose very specific and often burdensome obligations on Congress whenever it seeks to abrogate state immunity. The Committee monitors developments in this area, has written amicus briefs on the issue in the Supreme Court, and has developed a paper and made a presentation on the issues.

The Committee has had an impressive set of successful litigation matters in its most recent decade. In Environmental Justice, it secured relocation for a community of 358 families adjacent to two Superfund sites in Pensacola, Florida, and with the cooperation of the Housing and Community Development Project, obtained relocation for an African-American public housing community contaminated with lead in Portsmouth, Virginia. (*Washington Park Lead Committee v. EPA*). The Committee helped secure a decision from the Nuclear Regulatory Commission ("NRC") that staff consider the socioeconomic impact of siting a uranium enrichment facility in two African-American communities in Homer, Louisiana that caused the company to withdraw its application.

In Leesburg, Florida, the Committee represented a local branch of the NAACP in litigation over discriminatory practices by the city and the local hospital, its largest employer, for minority communities in Pine Street, Carver Heights and Mont Clair. The claims were for zoning, municipal services, and building code enforcement and were based on Title VI and the Fair Housing Act. A consent decree will provide funds to a community development corporation for community improvements using innovative tax increment financing with a 30-year income stream. (*Tri-City Branch NAACP v. City of Leesburg*). The Committee obtained approval for a consent decree providing over \$7 million in funding to desegregate and redevelop section 8 housing in Dade County, Florida. (*Adker v. HUD*). The Committee also obtained \$26 million in federal Community Development Block Grant funds for desegregation and revitalization of seven African American communities in Pennsylvania. (*Sanders v. HUD*). Of note, the Fair Housing and Community Development Project also initiated a financial literacy and minority home ownership program 2002

In Voting, the Committee had three successful cases decided by the U.S. Supreme Court in 1996-7. *Young v. Fordice* held that a dual registration system for the motor voter registration had to be precleared under section 5 of the Voting Rights Act; *Lawyer v. U.S.* upheld a settlement plan that preserved a state senate district in Florida with a majority of Hispanic and African American voters; and *King v. State Board of Elections* approved a Hispanic-majority district in Illinois. The project also protected against attack Congressional districts and state Senate districts on behalf of black citizens in Florida, (*Fouts v. Harris; Chandler v. Harris*); and preserved voting districts of county commission and school board members in Dooley County, Georgia. (*Sanders v. Dooley County, Georgia*). The Voting Rights Project held a conference in anticipation of the 2000 census, fought unsuccessfully to allow the Census Bureau to use estimates to more accurately reflect the count for redistricting purposes, and worked with other civil rights organizations to encourage minority participation in Census 2000.

The Committee was called into action during the 2000 elections by numerous calls about voting abuses. There were many complaints about Florida. After a thorough investigation the Committee filed suit against Florida officials for voting abuses with particular emphasis on the aggressive exclusion of minority voters for claims that they were convicted felons. That suit, *NAACP v. Harris*, was settled in 2002. The Committee also sued Florida over its felon disenfranchisement laws. The trial court dismissed the case, and the Eleventh Circuit affirmed that dismissal.

Employment cases of note include *NAACP v. New Jersey Department of Public Safety, Division of State Police*, where a court-approved consent decree allowed 2,000 black and Hispanic applicants who were rejected to reapply; *Pigford v. Glickman*, the black farmers class action against the Department of Agriculture, where the Committee with others appealed to secure court-ordered compliance with the settlement by the Department; *Phillips v. Hooters of America*, where the Committee obtained a circuit court ruling allowing our client to pursue a sexual harassment claim in federal court in the face of an arbitration agreement in her employment contract that caused Hooters to discontinue to use arbitration agreements; and *Dowdell v. Ona Corp.* and *Brewer v. Miller Brewing Co.* where the Committee obtained \$2.5 million and \$2.7 million settlements, respectively, for racial harassment of our clients.

In Education the Committee resisted a declaration of unitary status in Allegheny County Pennsylvania (*Hoots v. Pennsylvania*) and negotiated \$300 million in state funding to implement reforms in Prince George's County, Maryland (*NAACP v. Prince George's County, Maryland Board of Education*).

2003-2008: Affirmative Action, Power of Congress, Election Protection, Re-Authorization of the Voting Rights Act, New Supreme Court Justices, and Katrina Litigation. As the Lawyers' Committee has moved into the twenty-first century it has continued to pursue the goals of its historic mission while adapting to and facing emerging challenges. The Committee continued to advocate for minority access to educational opportunities, to fight for the availability and quality of affordable housing, to protect the voting rights of historically disenfranchised and marginalized minorities, and to help those who have been discriminated against in the workplace. This important work continued alongside the development of new initiatives and the largest election monitoring program that the Lawyers' Committee has ever

deployed. During this period, the United States suffered one of the most devastating natural disasters in recent history, Hurricane Katrina and the inundation of New Orleans. The Lawyers' Committee mobilized teams of attorneys and volunteers to provide much needed legal assistance and advocacy work for those whose lives were impacted by this tragedy. The Committee continues to be very active in efforts to provide the communities of the Gulf Coast with the tools they need to rebuild.

2003. The Committee's extensive *amicus* work continued in 2003 with the filing of briefs in two of the most important recent Supreme Court decisions addressing the use of race in admissions to public institutions of higher education: *Gratz v. Bollinger* and *Grutter v. Bollinger*. Both cases involved the use of race in the admissions policies of the University of Michigan system. These decisions affirmed the value of diversity in higher education and permitted the use of race as a consideration in admissions even though the Court held unconstitutional the use of a system that gave applicants points towards admission based on their race. Although these cases were not a total victory, it was very gratifying to see the Court affirm the importance of the basic values of minority inclusion and access, for which the Lawyers' Committee has been a decades-long advocate.

The decision in *Nevada Dept. of Human Resources v. Hibbs* was an unqualified victory of which the Committee is very proud. The Supreme Court upheld the constitutionality of the Family Medical Leave Act as a valid exercise of Congress's enforcement power under Section 5 of the Fourteenth Amendment. The work in this case was done by lawyers in the Power of Congress Program, which seeks to protect and expand the power of Congress to provide legal remedies for violations of civil rights and for victims of discrimination. This work is especially important at a time when the federal courts have become increasingly hostile to claims of civil rights abuses and individual discrimination.

The Committee's Environmental Justice Project was also very active in 2003 and filed several complaints with the Department of Justice on behalf of poor communities upon which a disproportionate share of the pollution and toxic waste of the area had been placed. Lawyers working with the Committee also pursued school desegregation in Thomasville, Georgia, housing discrimination in Portsmouth, Virginia, and voting rights protection for minorities in Georgia. Finally, the Lawyers' Committee celebrated its Fortieth Anniversary in 2003 with the tremendously successful Founders' Gala. This event included the presentation of honors recognizing Fannie Mae and PepsiCo, Inc. for their workplace diversity initiatives, the presentation of "Legends of the Lawyers' Committee," Judge Oberdorfer's tribute to Burke Marshall and the Kennedy legacy, and Senator Kennedy was awarded the Beacon of Justice Award. In addition, the Gala raised over \$1,600,000 to further the goals of the Committee.

2004. The Power of Congress Program Committee's *amicus* work helped achieve another favorable decision from the Supreme Court in *Tennessee v. Lane*. The Court held that there was a fundamental right of access to the courthouse and that Title II of the Americans with Disabilities Act was a valid exercise of Congress's power under Section 5 of the Fourteenth Amendment to abrogate state sovereign immunity from suits involving violations of this right. This was a significant victory for the disabled and the Power of Congress Program.

The decade-long legal battle in *Wynwood Community Economic Development Corp. v. City of Miami* was finally favorably concluded for our client, Wynwood, in 2004. Wynwood has been fighting the City of Miami and the former developer to establish a Foreign Trade Zone in a predominately poor and disadvantaged Puerto Rican community. Litigation resulted in clear title being passed to Wynwood and the Foreign Trade Zone finally became operational.

The Lawyers' Committee also lead the *amicus* work in *Dukes v. Wal-Mart*. This case was the largest proposed class-action suit ever filed and involved over 1.6 million women who alleged pervasive employment and wage discrimination by Wal-Mart. This case remains active to this day, and the Ninth Circuit recently affirmed the decision to certify this enormous class. Several key voting rights cases also were resolved in our clients' favor in 2004. In *Arbor Hills Concerned Citizens v. Albany County*, the Second Circuit affirmed the power of the district court to require special elections after finding that the county's redistricting plan violated the Voting Rights Act. Furthermore, the First Circuit, sitting *en banc*, was the first United States' Court of Appeals to approve an "ability to elect" theory as the basis for an action under Section 2 of the Voting Rights Act in a case involving a redistricting plan for the Rhodes Island Senate.

As pleased as the Lawyers' Committee was with its courthouse successes, it was even more proud of the Election Protection Program, its signature program for 2004. This program was the largest national election monitoring campaign that the Lawyers' Committee has ever undertaken. The necessity of such a comprehensive and extensive program became apparent after the controversy surrounding the 2000 Presidential election and the myriad problems reported in precincts in Florida. The Program involved three regional call centers in New York City, San Francisco, and Washington, D.C. along with a central command center in D.C. In addition to these centers, there were over 600 individual call stations taking reports by voters of irregularities in voting procedures and possible violations of elections laws. Over twenty-five thousand volunteers participated in this enormous effort alongside eight thousand legal volunteers who included lawyers and law students working as poll monitors and field attorneys ready to provide on-site legal help if necessary. The efforts of the volunteers and attorneys paid off as thousands of reports of possible election irregularities were received and processed. These complaints served as the basis for several lawsuits against Ohio, Louisiana, and Florida.

Finally, the Lawyers' Committee drafted a report on and an opposition to the nomination of Alberto Gonzales as United States Attorney General. The report identified troubling patterns of decisions and actions by Gonzales in civil rights cases that placed in doubt his ability to direct the Department of Justice's efforts to enforce civil and voting rights laws. Despite this prescient report, Gonzales was confirmed.

2005. This eventful year witnessed the passing of Chief Justice William Rehnquist and the retirement of Justice Sandra Day O'Connor. These events brought an end to the longest sitting Supreme Court panel in American history and the appointment of two new members to the Court. The Lawyers' Committee was active in researching and evaluating the backgrounds and decisions of Judges John Roberts and Samuel Alito. In both cases, the Committee's final statements urged the Senate to neither confirm nor endorse the candidates for the Court. However, Judge Roberts was confirmed as the new Chief Justice. By a vote of 58-42, Judge

Alito was confirmed as a new Associate Justice by the second narrowest margin in modern times. Justice Clarence Thomas was confirmed 52-48.

Even though there was great concern over the direction of the newly composed Supreme Court, the Lawyers' Committee continued its efforts on the legislative front. The Voting Rights Project continued its efforts to lobby Congress for re-authorization of important sections of the 1965 Voting Rights Act set to expire in 2007. Towards this end, the Lawyers' Committee established the National Commission on the Voting Rights Act. The Commission's mission was to travel the country and hold hearings on the impact of the Voting Rights Act and to provide the Congressional committees debating its renewal with evidence of discrimination in voting since the last re-authorization in 1982.

The largest effort of the year was undoubtedly the response to the humanitarian crisis in the aftermath of Hurricane Katrina. Lawyers from across the country were part of the huge numbers of volunteers that went to the Gulf Coast to help with relief efforts. The Lawyers' Committee, in partnership with the Mississippi Center for Justice, was deeply involved in setting up the legal aid infrastructure necessary to help the thousands of displaced families deal with the intricacies and absurdities of the federal disaster relief bureaucracy and the property and insurance nightmares following the devastation. Among other things, attorneys working with the Committee ran legal assistance workshops for survivors and created a "Survivor's Manual" as a reference for navigating insurance claims and government assistance.

In addition to the assistance provided directly to survivors, the Committee filed suit against FEMA, *McWaters v. FEMA*, to compel the agency to provide adequate relief services and to enjoin the application of rules that impeded families' ability to receive assistance. In a partial victory, the district court held that FEMA was not immune from private suit for violations of the Due Process Clause of the Fifth Amendment, and it issued an injunction extending the time FEMA was required to house evacuees in hotels. Unfortunately, the Due Process claims brought against FEMA were dismissed.

2006. The Committee continued its *amicus* practice with the filing of briefs in two important school desegregation cases: *Parents Involved in Community Schools v. Seattle* and *Meredith v. Jefferson County Board of Education*. Both cases addressed the use of race in voluntary school desegregation and tested the application of the *Grutter/Gratz* framework in the K-12 setting. The Committee also filed *amicus* briefs in *Ledbetter v. Goodyear* that argued Title VII claims may be brought based on any paycheck that is the product of wage discrimination and not only after the initial discriminatory pay-rate determination is made. The Lawyers' Committee was delighted when the Supreme Court adopted arguments in its *amicus* brief filed in *Burlington Northern & Santa Fe Railway v. White* that Title VII's anti-retaliation provision should be interpreted broadly to extend to retaliation that occurs outside the workplace and that is not necessarily employment-related.

The Committee's historic dedication to the protection of voting and civil rights was furthered in 2006 with the release of the National Commission's reports on the Voting Rights Act, the commissioners' testimony before Congress and the re-authorization of all parts of the Voting Rights Act on July 20, 2006. In addition, the Voting Rights Project filed a lawsuit in

conjunction with other groups that represent the interests of minorities and the Department of Justice to stop the implementation of Arizona's Taxpayer and Citizen Protection Act, which would require documentary proof of citizenship before voting: *InterTribal Council of Arizona v. Brewer* and *Gonzales v. Arizona*. Finally, the Committee filed an important shadow report with the United Nations' Human Rights Commission on the United States compliance with the International Convention on Civil and Political Rights. This report detailed the state of civil and political rights, especially voting, in the United States. It was used by the Commission as a comparison to the official compliance report issued by the United States.

The work for Katrina survivors and evacuees continued throughout 2006. The Lawyers' Committee was actively involved in lobbying state legislatures and the Congress to include provisions for affordable housing in redevelopment legislation. Many of the communities and neighborhoods most affected by Katrina were poor and minority. There is little incentive for developers to rebuild these areas when there are much greater profits to be made in rebuilding tourist areas and casinos. The work of the Lawyers' Committee was essential in ensuring that of the billions of government dollars going to reconstruction a sufficient share is set aside to provide incentives for builders and developers to bring these areas back.

Lead by Marjorie Lindblom, Rob Harrington and Marsha Sims, with the support of the Executive Committee and with extensive drafting by the staff, Jack London and the Strategic Planning Committee, the Lawyers' Committee completed its third strategic planning process that featured a two-day Board and staff retreat. Approved early in 2007 the Committee's five-year Strategic Plan acknowledges the success of the 1998 and 2002 strategic plans and outlines specific strategies for each of its five traditional programs - Education, Employment, Environmental Justice, Housing and Community Development, and Voting Rights. The plan also includes strategies to increase the Committee's communication and public policy capabilities and to work with coalitions to advocate and educate through the media, to expand the Committee's pro bono transactional work for community economic development, to increase the Committee's work through international treaties and fora, and to encourage the Department of Justice to return to its historic practice of protecting and enforcing civil rights.

2007. This year saw a series of disappointing decisions from the Supreme Court. First, the legacy of *Brown v. Board of Education* was put in doubt by *Parents Involved in Community Schools v. Seattle* and *Meredith v. Jefferson County Board of Education*. In both cases, a narrowly divided Court held that the use of race to assign individual students to schools as part of a voluntary desegregation program was unconstitutional. However, Justice Kennedy's important concurrence re-affirmed his view from *Grutter/Gratz* that encouraging racial diversity is a compelling state interest albeit the means chosen here to further this interest were improper. While school districts options to consider race are unclear, the Education Project has created a Response Plan and raised funds to fund a staff attorney that will provide districts guidance as to craft race-conscious pupil assignment plans, offer litigation assistance to defend the plans and provide public relations support to tout the plans. The Court's decision in *Ledbetter v. Goodyear* also dealt a blow to the cause of remedying employment discrimination when it held that claims based on pay-rate discrimination must be brought within 180 days of the initial pay-setting decision and not within 180 days of a paycheck that is the product of such a decision. The Lawyers' Committee's *amicus* brief urged the Court to adopt the latter position because possibly

discriminatory differences in pay are often not discovered within this very narrow window. Unfortunately, many cases of discriminatory pay may now go un-remedied. In response to this decision, the Committee has been supporting efforts to pass the Ledbetter Fair Pay Act, which would amend Title VII to allow actions based on such practices.

Despite these setbacks, several initiatives were extremely successful in 2007. The Community Development Initiative partnered with North Gulfport Community Land Trust and the Coastal Family Health Clinic to restore health care services and housing to underserved areas of Mississippi still suffering almost two years after Katrina. The Community Development Initiative also continued its efforts in the Heirs' Property Initiative. This initiative is designed to assist primarily African-American communities reclaim and protect their land, the titles to which are often complicated and compromised by multiple tenancies in common created by generations of intestate succession. The Heirs' Project works with families to clear title to their land so that it may be protected from developers and put to productive use. The Second Wind Project is a grassroots small-business advocacy group of the Lawyers' Committee that provides entrepreneurs with the resources they need to re-start and sustain small businesses that were forced to close after the storm. This Project succeeded in securing over \$100 million for small businesses affected by the hurricane.

The Committee also continued its public policy work by supporting the testimony before Congress of former employees of the Civil Rights Division of the Department of Justice regarding the politicization of the Division during the Bush Administration and the tenure of Attorney General Gonzales. Finally, the Committee formalized its efforts with international law by forming the International Committee. This group was created to integrate and disseminate information about the application of international law, e.g., the International Convention on Civil and Political Rights, to domestic civil rights cases. International law and the United States treaties and statutes that implement them are becoming an increasingly important source of human rights and civil rights law. The International Committee drafted and submitted its shadow report, *Unequal Opportunities: A Critical Assessment of the US Commitment to the elimination of Racial Discrimination*, to the United Nations Committee on the Convention for the Elimination of All Forms of Discrimination. The report details the failure of the United States Government to enforce federal civil rights laws.

2008. Thus far 2008 has been a more successful year for the Committee's litigation efforts. The Employment Project settled a portion of its long running *Local 28 of the Sheet Metal Workers v. EEOC*, obtaining \$6.2 million for our clients. The Employment Project also filed *amicus* briefs in two United States Supreme Court cases where the Court ruled as argued by the Committee. In *CBOCS West, Inc. v. Humphries*, the Court ruled that race retaliation is cognizable under 28 U.S.C. § 1981. In *Sprint/United Management v. Mendelsohn*, the Court declined to adopt a *per se* rule of inadmissibility for evidence that other supervisors, not the plaintiff's, discriminated against other employees on the same protected characteristic, but instead concluded that judges should apply the Federal Rules of Evidence to determine admissibility on a case by case basis. The Education Project helped the NAACP as intervener in *State of Connecticut, et al., v. Margaret Spellings, Secretary of Education*, convince the court to reject the State's challenge to the No Child Left Behind Act. The Housing Project settled the *Greater New Orleans Fair Housing Center v. St. Bernard Parish* case with a consent decree

permanently enjoining an ordinance requiring that rentals only be made to blood relatives. The Fair Housing Project also had success in three courts where it filed amicus briefs – The Connecticut Supreme Court, the Maryland Court of Appeals and the Second Circuit protected the rights of Section 8 voucher holders and the broad enforcement authority of the Fair Housing Act. Finally, the Voting Rights Project defended the constitutionality of section 5, the preclearance provision, of the reauthorized Voting Rights Act in a three judge court in *Northeast Austin Municipal Utility District v. Mukassey*, representing the Texas Conference of the NAACP and the Austin Branch of the NAACP as interveners. The court in reviewing the record before Congress called special attention to the work of the National Commission on Voting Rights created in 2005 by the Lawyers' Committee. The Voting Rights Project also brought *ACORN v. Scott*, and obtained an injunction based on the National Voter Registration Act for failure of the State of Missouri to provide voter registration applications at public assistance agencies. As we prepare for the 45th Anniversary of the Committee, the Voting Rights Project is on trial challenging Arizona's "Proposition 200," a strict voter identification law requiring proof of citizenship to register to vote. The case is *Inter Tribal Council of Arizona v. Brewer*.

The Lawyers' Committee has also had success with several non-litigation activities. The Environmental Project completed its ambitious work with the National Commission on Environmental Justice on the Gulf Coast and prepared and presented its report. The Voting Rights Project conducted Election Protection efforts on several Presidential Primary dates covering many states, and is in the process of gearing up for the November Presidential Election, with the National Call Center up and running since August 12, 2008. In addition the Fair Housing Project in partnership with the National Fair Housing Alliance, Leadership Conference on Civil Rights and the NAACP Legal Defense Fund has launched the Commission on the 40th Anniversary of the Fair Housing Act, with hearings held or to be held in Chicago, Los Angeles, Boston and Atlanta to assess the state of fair housing in our country.

Conclusion The Lawyers' Committee for Civil Rights Under Law has a rich and dynamic history of service, seeking to secure for all the rights that are the ideals on which our country was founded. The Committee's staff, its lawyer volunteers, its supporting law firms, the foundations, corporations, law firms, lawyers and individuals who provide financial support, the staff and lawyer volunteers of the local affiliates and the clients who we all serve, can be justifiably proud of our accomplishments. Much remains to be done to defend the progress we have made and to make the ideals of our nation a reality.

The twenty-first century has presented new challenges and new solutions have been required to meet these head-on. Fortunately, over the past forty-five years, the Lawyers' Committee has developed a network and a tradition that were able to adapt to and meet these challenges. Not every argument and fight met with success, but there is much work to be proud of, especially the amazing response to the tragedy along the Gulf Coast during the 2005 hurricane season. This tragedy has driven the creation of new projects and initiatives that will continue to be invaluable to underserved communities inside and outside the region for years to come.

The necessity and the success of the 2004, 2006 and 2008 Election Protection Projects are testaments to the continued importance and vitality of the Lawyers' Committee's central

mission. Voting and civil rights continue to be threatened, and there must be someone protect these most important American values. Prejudice and discrimination have not been eliminated, and the Lawyers' Committee must continue to defend the interests of those who would not be able to defend themselves without its service. This work will surely continue to inspire lawyers to share their knowledge, experience, and dedication to ensure that the promises of equality and justice are realities.

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