

Jewish Lawyers and the Long Civil Rights Movement 1933-1965: Race,  
Rights and Representation

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However, a last word on the subject of Jewish lawyers and civil rights. My fervent hope is that everyone reading this dissertation will realize how indebted we all are to these lawyers for their disproportionate, sustained, and collective contribution to the legal and social history of America. Today, with the Constitution under threat from the executive, and from all those in positions of authority who have demonstrated contempt for the law, the judiciary and most significantly, the American people, it is imperative to remember that the struggle continues and so too does the need for the civil rights lawyer.

## **ABSTRACT**

This dissertation demonstrates that the collective contribution of Jewish lawyers to the long civil rights movement in America was greater than the dominant narrative has suggested. It places those lawyers in three distinct periods, which correspond with three phases in the development of civil rights struggle: the New Deal era of the 1930s, when they served as labor lawyers; in the 1940s and 1950s, when they became constitutional litigators fighting institutional discrimination in the courts; and in the 1960s, when they became movement lawyers and supported civil rights activists. What the work here shows is a sustained commitment on the part of Jewish lawyers to a broad rights agenda—one in which race was consistently a factor, but which also included economic and workers' rights as well.

The work draws, in part upon interviews with veteran lawyers and their oral histories, and in doing so demonstrates that a commitment to social justice was rooted in a liberal Jewish culture—a belief in the Constitution and what it means to be an American citizen with all of the attendant rights and responsibilities. It also draws upon documentary archival materials, which show the exceptional levels of cooperation that existed between Jewish and African American organizations, especially in the area of litigation and how, acting out of mutual self-interest, they used the courts and the law to effect social outcomes in housing, education and employment.

While most Jewish lawyers were not civil rights lawyers, a disproportionately large number were. This project represents a critical intervention in civil rights history by addressing an omission in legal and social historiography by demonstrating the collective contribution by Jewish lawyers who used the law in the long struggle for rights and in doing so helped to change the legal and social landscape of an increasingly pluralistic America.

## INTRODUCTION

### **Jewish Lawyers and American Civil Rights History 1933-1965**

“...I felt a nakedness on my head, as if I were in a synagogue and not wearing a skullcap.”

Jack Greenberg, former Director-Counsel of the NAACP Legal Defense and Education Fund on entering the Supreme Court.

“We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people...”

Preamble to the National Lawyers Guild Constitution, 1937 as amended 1971.

The belief that the law could be used as a tool for social change, held in common by young, first and second generation Jewish Americans whose parents had suffered the pogroms of Czarist Russia and later the horrors of the Holocaust, became central to the achievement of social justice and civil rights in America. Jewish lawyers, stigmatized by their ethnicity, with names that identified them as the children of immigrants and so somehow less than American, often barred from the most prestigious law schools and firms, gave voice to those even more marginalized than themselves. Among them were the legally and materially marginalized, including workers, Native Americans, Japanese Americans, African Americans, and political activists. Those clients were not the bread and butter of these Jewish lawyers, for there was little money to be made here. Rather their causes and cases became the means by which politically committed lawyers campaigned to protect and expand the rights of citizens within a constitutional framework, supported by democratic institutions and values. This dissertation takes up their story. It shows that Jewish lawyers, using the law and the courts, made a disproportionate collective contribution to the securing and furtherance of civil rights during the period 1933 to 1965. Further, their representation of those Americans marginalized by their race, religion, or

ethnicity, demonstrated the merit of constitutional litigation in producing social outcomes. Their role in helping to construct a more just and representative national community supports the contention of a continued role for constitutional litigators in the as yet unfinished struggle for rights and equality in a democratic America.

### **Jewish Lawyers and the Long Civil Rights Movement**

Significant and sustained Jewish involvement with the civil rights movement has historically, in the public conscience, been associated with, and to a large extent confined to the classical period of the 1950s to the mid 1960s. It was a time when the movement and the so-called Black-Jewish alliance enjoyed what has been described as a golden era, characterized by optimism, common purpose, cooperation, and landmark legal decisions.<sup>1</sup> But this celebrated narrative, largely confined to a relatively short struggle for race-based rights in the South, has virtually elided from popular history a much longer struggle for rights in America in which Jewish lawyers figured prominently. The narrow view, circumscribed by time, race, place, and personalities, has been embedded in the national consciousness in such a way as to obscure what has been a much longer and wider struggle for equality.<sup>2</sup> It was a struggle first rooted in the socioeconomic inequalities inherent in American democracy, exacerbated and made more conspicuous by the Depression, and one in which Jewish lawyers exploited an opportunity from which to effect social change through the New Deal and its welfare reform agenda.

In her positing of a longer civil rights movement, Jacquelyn Dowd Hall situates its beginnings in “the liberal and radical milieu of the late 1930s” and further ties it to the New Deal and the civil rights unionism of the 1940s in which, it will be demonstrated, Jewish lawyers played a decisive role.<sup>3</sup> The collective and disproportionate contribution of these lawyers to the achievement of a more equitable distribution of the nation’s wealth

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<sup>1</sup> While there was no formal alliance, the description of the relationship is supported by the sustained and close cooperation between African Americans and Jews, especially at the organizational level as referenced by historians including Murray Friedman in *What Went Wrong? The Creation & Collapse of the Black-Jewish Alliance* (New York: The Free Press, 1995), Cheryl Lynn Greenberg in *Troubling the Waters: Black-Jewish Relations in the American Century* (Princeton: Princeton University Press, 2006), and Clayborne Carson notes “the black-Jewish institutional relationship was formalized in 1951 through the creation of the Leadership Conference on Civil Rights.” Clayborne Carson, “Black-Jewish Universalism in the Era of Identity Politics,” in *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the United States*, eds. Jack Salzman & Cornel West (New York: Oxford University Press, 1997), 178.

<sup>2</sup> Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past,” *Journal of American History*, Vol. 91, No. 4 (Mar. 2005): 1233. <http://www.jstor.org/stable/3660172>. (accessed November 2016).

<sup>3</sup> Ibid., 1235.



and opportunities can be traced back to this period which served as the foundation of the later struggle for race-based rights. Placing them here demonstrates a longer and continuing involvement that predates the classical phase and so serves to underpin the contention of a longer and wider civil rights movement and the contribution of Jewish lawyers to it. In consideration of a longer struggle, Dowd Hall is not alone among those historians who place the locus of the movement in the 1930s and 1940s when a socially conscious administration in Washington, a rights-orientated court, liberal activism and union organization converged, creating a climate and a kind of framework in which social change was believed to be possible.

Specifically, Robert Korstad and Nelson Lichtenstein state unequivocally that, “The civil rights era began, dramatically and decisively, in the early 1940s...” and credit the unions with effecting change in an arena in which the National Association for the Advancement of Colored People (NAACP) and Urban League had failed.<sup>4</sup> In her examination of the relationship between labor, race and politics in Detroit, Heather Ann Thompson asserts that the United Auto Workers (UAW), a major affiliate of the Congress of Industrial Organizations (CIO), “largely succeeded in its battle for industrywide recognition because of the agitation and activism of communists and socialists in its midst.”<sup>5</sup> Marshall F. Stevenson Jr. further argues that “any discussion of race and ethnicity in the CIO has to take into account the role of the Communist Party (CP), and in turn the CP’s disproportionate recruiting efforts among African Americans and Jews.”<sup>6</sup>

What must also be taken into consideration is the effect of the Depression on the “social history of the American legal profession.”<sup>7</sup> Jerold Auerbach argued that the “Economic catastrophe [of the Depression] produced severe dislocation which momentarily weakened the power of the professional elite and the values that sustained it.”<sup>8</sup> That, plus the “energetic reform administration in Washington...” represented by the

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<sup>4</sup> Robert Korstad and Nelson Lichtenstein, “Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement,” *Journal of American History* Vol. 75, No. 3 (Dec. 1988): 786. <http://www.jstor.org/stable/1901530>. (accessed 18 March 2016).

<sup>5</sup> Heather Ann Thompson, *Whose Detroit?: Politics, Labor, and Race in a Modern American City* (Ithica: Cornell University Press, 2001), 13.

<sup>6</sup> Marshall F. Stevenson Jr., “African Americans and Jews in Organized Labor: A Case Study of Detroit, 1920-1950” in *African Americans and Jews in the Twentieth Century*, ed. V.P. Franklin, Nancy L. Grant, Harold M. Kletnick, and Genna Rae McNeil (Columbia: University of Missouri Press, 1998), 238.

<sup>7</sup> Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 6.

<sup>8</sup> Ibid.

New Deal's social welfare programs and "a temporary spirit of vitality in labor union organization and in civil rights litigation afforded additional opportunities for minority-group lawyers...whose social origins disqualified them from employment in the elite private sector."<sup>9</sup> Through their pursuit of economic and social justice, Jewish lawyers, struggling to find their place within the legal hierarchy, fitted into an emerging alliance of Jews and Blacks that was to prove beneficial to both marginalized peoples, at least for some decades to come. Their evolution from labor lawyers to constitutional litigators and finally movement lawyers is evidence of the positive critical intervention and contribution of these Jewish lawyers to a broad and mutable civil rights legal history.

This dissertation will demonstrate, through an examination of cases and the lawyers who argued them, that the law, lawyering and the courts were central to the achievements of the long civil rights movement. In her re-examination of the role of the lawyer in the context of a longer civil rights movement, Risa Goluboff has stated unequivocally, "The legal history of civil rights is not what it used to be," adding, "A new civil rights history has arrived."<sup>10</sup> But Goluboff's "new history" is simply a history that pre-dated *Brown v. Board of Education* and one in which economics and not de jure segregation figured prominently and clients, not lawyers set the agenda. Significantly Goluboff holds the lawyers, especially those working for the NAACP in the 1950s, responsible for creating the legal framework that constrained a broader rights agenda. This dissertation will argue this is not enough to merit a new civil rights history nor should it diminish the symbolic and legal significance of *Brown*. Goluboff, Kenneth Mack and a new coterie of legal scholars and historians have succeeded only in turning a revisionist's eye to this important arena of achievement. Goluboff herself admits that the "new" is always written against the "old".<sup>11</sup> Historian Nelson Lichtenstein in his review of Goluboff's *The Lost Promise of Civil Rights*, credits Goluboff with being "creatively revisionist."<sup>12</sup> However if one subscribes to the long view, Goluboff has simply redirected the beam of a torch and turned up the intensity on an existing history that was dimmed by the dominant narrative.

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<sup>9</sup> Ibid.

<sup>10</sup> Risa Goluboff, "Lawyers, Law, and the New Civil Rights History," review of *Representing the Race: The Creation of the Civil Rights Lawyer*, by Kenneth W. Mack, *Harvard Law Review* Vol. 126, No. 8 (2013): 2312-335. <http://www.jstor.org/stable/23415101>. (accessed 21 June 2018).

<sup>11</sup> Ibid., 2318.

<sup>12</sup> Ibid.

In her re-examination of the role of the lawyer, Goluboff is not alone. But this dissertation will argue that “sustained litigation campaigns,” when backed up by activism and political determination, have brought about significant social change.<sup>13</sup> Leroy D. Clark asserted, “the usefulness of the lawyer in the context of massive social inequity is in serious doubt.”<sup>14</sup> And he further argued, that “Previous approaches toward altering the patterns of racism in American life through constitutional litigation... have had limited effect.”<sup>15</sup> However, the record speaks otherwise as evidenced by judicial decisions in areas including discrimination in employment, school segregation, abortion, the environment and matters of church-state relations.<sup>16</sup> And yet, apparently dismissing these achievements, Clark gives voice to the hope that “...lawyers will increasingly devise ways to make the legal process responsive to the demands that gross injustices end...”<sup>17</sup> While the work of historians like Clark, Goluboff, and Mack is instructive and often illuminating, it does not successfully challenge the law and lawyers as central to the achievement of civil rights. This is not to suggest that ‘the law’ exists in a vacuum, divorced from the wider community, politics and economics of a particular time and place; the law is as imperfect as its players. But it will be argued that the law, the lawyers and the courts were among the primary arbiters in the contested arena of civil rights and central to the African American struggle for equality under the law, within the limits of liberalism and within the constraints of a democratic society.

The articulation of an extended civil rights history allows the actions of these lawyers to be situated in specific periods in which the political and social contexts were significant determinants in dictating the terms of engagement and the type of rights that were pursued. Further, as Tomiko Brown-Nagin asserts, “a broad and deep civil rights narrative...should reflect the contribution of those with formal power-those above-and the

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<sup>13</sup> Jack Greenberg, *Judicial Process and Social Change: Constitutional Litigation Cases and Materials* (St. Paul: West Publishing Company, 1976), 581.

<sup>14</sup> Leroy D. Clark, “The Lawyer in the Civil Rights Movement - Catalytic Agent or Counter-Revolutionary,” *University of Kansas Law Review*, Vol.19 (1970): 473.  
<https://scholarship.law.edu/cgi/viewcontent.cgi?referer=https://www.google.co.uk/&httpsredir=1&article=1820&context=scholar>. (accessed 21 June 2018).

<sup>15</sup> Ibid.

<sup>16</sup> Jack Greenberg, *Judicial Process and Social Change: Constitutional Litigation Cases and Materials* (St. Paul: West Publishing Company, 1976), 581.

<sup>17</sup> Ibid.

citizens who struggled on the ground for equal justice under law.”<sup>18</sup> In fact, Jewish lawyers in the 1930s, as marginalized Americans, had, so to speak, a foot in both camps. In overcoming the limits ranged against them, they manipulated the levers of power within government and in conjunction with union activists and on behalf of workers. Their “socio-legal legacy”<sup>19</sup> supports a narrative in which civil rights lawyers, disproportionately and significantly among them Jewish lawyers, were among those architects of an American democracy more representative of all of its citizens.

This project is about Jewish lawyers and their place in that historical narrative. It approaches them as individuals, but also, sometimes, within organized groups. Their own narratives and archival evidence suggest a commonality of culture and intent which allows us to consider them as cohorts in a cause, whose individual contributions collectively amounted to a decentralized movement for social change. While some acted within Jewish agencies in concert with other rights organizations, when viewed as cohorts in a cause, the arenas in which they battled, those whose rights they represented and whose liberties they defended, will inform the way in which we view the history of a longer, as yet unfinished civil rights movement.

The names of some of these lawyers will be familiar, appearing in footnotes, chapters or even as individual biographies, for example, Nathan Margold, Carol Weiss King, Jack Greenberg and William Kunstler.<sup>20</sup> Others including Richard Gladstein, George Cooper, Faith Seidenberg, and Pam Horowitz, will be less familiar, and the lack of any real account that brings them together in an effort to establish the connections between them, limits our understanding of how the legal battle for rights has been waged in the past and how it might be waged in the future. Further, situating these lawyers within the framework of the so-called Black-Jewish alliance, also helps us to see how the long view of this

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<sup>18</sup> Tomiko Brown-Nagin, “The Civil Rights Canon: Above and Below,” *Yale Law Journal* Vol. 123, No. 8. (2014): 3152. <https://www.yalelawjournal.org/essay/the-civil-rights-canon-above-and-below>. (accessed 21 June 2018).

<sup>19</sup> Ibid.

<sup>20</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), Ann Fagan Ginger, *Carol Weiss King, Human Rights Lawyer, 1895-1952* (Niwt: University Press of Colorado, 1993), Murray Friedman, *What Went Wrong?: The Creation & Collapse of the Black-Jewish Alliance* (New York: The Free Press, 1995), Jonathan Kaufman, *Broken Alliance: The Turbulent Times Between Blacks and Jews in America* (New York: Simon and Schuster, 1988).

complicated and wholly unequal relationship has far greater implications, not just for the civil rights movement as an ongoing project, but also for the future political direction of a divided America. The civic concept of a democratic America demands that its citizens act out of mutual, rather than narrow, self-interest. The strength of America's democracy, especially when the threat comes from within, can be found in the Constitution, those who defend it, and those people in whose names it was framed. Jewish lawyers, marginalized by their ethnicity, forged alliances and used the law and the constitution to pursue rights, not just for themselves but for all American citizens in the interests of creating a more equitable and so more democratic America.

The Black-Jewish alliance was very much in evidence when a cadre of liberal and leftist Jewish lawyers and activists crossed Dowd Hall's "color line."<sup>21</sup> Forged between Blacks and Jews at the individual and organizational levels, it falls into Chafe's larger construct of a "biracial liberal coalition of northern urbanites, union members, and minorities."<sup>22</sup> There is no question that many Jewish lawyers were involved in the areas of labor, labor law and civil rights law during the 1930s-1960s. Consider, for example, that Jack Greenberg, the Director-Counsel of the NAACP Legal Defense and Education Fund (LDF) for more than twenty years was a Jew, and that Herbert Hill, also Jewish, served as the labor director of the NAACP for decades. While both dedicated their lives to the pursuit of economic and social justice for African Americans, their views of a so-called Black-Jewish alliance were at odds. Greenberg, in his semi- autobiographical account of his years at LDF wrote that, "The idea of an alliance between Jews and blacks was a central tenet of all left-wing and liberal American Jews."<sup>23</sup> While Greenberg does not elaborate as to what actually constitutes this alliance, he suggests that its origins could be traced to an "Eastern European Socialist-Zionist culture" in which "discrimination and persecution were evils," and a belief that both Jews and Blacks "suffered from a deep, economically based, and racially motivated hatred that had to be opposed."<sup>24</sup> Yet Hill argued that in his three decades in the civil rights movement he was in fact "forced to

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<sup>21</sup> Jacquelyn Dowd Hall, "The Long Civil Rights Movement and the Political Uses of the Past," *Journal of American History*, Vol. 91, No. 4 (Mar. 2005): 1251.

<sup>22</sup> William H. Chafe, "Race in America: The Ultimate Test of Liberalism," in *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 164.

<sup>23</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 52.

<sup>24</sup> *Ibid.*

question the much exaggerated assumptions of a Black-Jewish alliance. What did emerge in the 1940s,” he continued, “was the participation of some Jewish organizations in the legal and legislative civil rights efforts of that period, activities limited to leadership elites and professional staffs, but there was no mass involvement of the Jewish people”.<sup>25</sup> Nancy Weiss resolves the conflict by taking a view that goes beyond numbers and ideology. “Jewish influence in the NAACP comes not from disproportionate numbers,” she wrote, “but from the critical roles played by particular individuals in the organization’s early decades.”<sup>26</sup>

Through the 1930s, 1940s and 1950s, within the labor movement and the New Deal, through a string of legal cases including *Brown v. Board of Education* in 1954 and into the so-called classical phase of the 1960s, Jewish lawyers made a crucial intervention into the arena of civil rights law, culminating in a restructuring of the American social and legal landscape.

This dissertation will, through the examination of the individual stories of Jewish lawyers, acting across a longer civil rights movement, construct a picture of how, as a group, they used the law as a tool with which to effect change, shaping and reshaping social history in their support of justice. When initially approaching this project, my thirty years as a radio journalist alerted me to the possibilities of the use of oral history as a valuable resource and of course, also the pitfalls associated with personal testimonies, in regard to memory and bias. What I found was, that in tracing the common thread that knitted these lawyers together, a collective story emerged. As Lindsay Dodd has demonstrated, oral histories can bridge the recovery of individual and collective experiences.<sup>27</sup> Oral histories are individual stories, and this project weaves the individual level of experience into a narrative about, in effect, a network of individuals. It is oral history that allows the historian to fill the gap between the official paper record and human

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<sup>25</sup> Herbert Hill, “Black-Jewish Conflict in the Labor Context: Race, Jobs and Institutional Power,” in *African Americans and Jews in the Twentieth Century: Studies in Convergence and Conflict*, ed. V.P. Franklin, Nancy L. Grant, Harold M. Kletnick, Genna Rae McNeil (Columbia and London: University of Missouri Press, 1998), 289.

<sup>26</sup> Nancy J. Weiss, “Long-Distance Runners of the Civil Rights Movement: The Contribution of Jews to the NAACP and the National Urban League in the Early Twentieth Century,” in *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the United States*, ed. Jack Salzman and Cornell West (New York: Oxford University Press, 1997), 130.

<sup>27</sup> Lindsey Dodd, “Small Fish, big pond: using a single oral history narrative to reveal broad social change.” in *Memory and History: Understanding memory as source and subject*, ed. Joan Tumblety, (Abingdon: Routledge, 2013), 39-46.

experience. Further, these oral histories add vibrancy and vitality to the manuscript and archival record, demonstrating the depth of connection between the individual and group heritage. At the same time, these sources demand examination in order to, as Rosanne Kennedy instructs, reconcile testimony and memory in order to legitimize their use in the construction of history.<sup>28</sup>

The use of oral histories in this project are therefore critical to understanding how, in their own words, the common culture from which these first and second-generation Jews emerged, positioned them on the margins of the social fabric, and at the same time provided them with the moral compass and values that allowed them to negotiate a system configured in such a way as to exclude them. The interviews undertaken by the author for this dissertation provided the opportunity to ask new questions and so bring new light to bear on older oral history transcripts. Those personal narratives have added a human dimension to the memoranda and other archival materials consulted in the course of research here, giving insight into not simply what took place but also why.<sup>29</sup>

I conducted interviews with six civil rights lawyers, some now retired, others still practicing, and cross-referenced those with a volume of oral testimonies taken in the course of the past decades. This was undertaken in order to locate potential bias and discrepancies, differences and commonalities in relation to periods of activity, region, and gender. This allowed me to determine that there was a common thread connecting these individual lawyers. For example, one of my subjects, Joe Levin was a Jewish Southerner who co-founded the Southern Poverty Law Center or SPLC, but who was, by his own admission, at one time a racist. Another subject, Pamela Horowitz, was a Midwesterner whose father was Jewish but whose mother was not, and who identifies as Jewish in a somewhat ambivalent manner. Some of the lawyers who were active in the 1930s were first generation Americans and came from Orthodox immigrant backgrounds, while others came from ideologically socialist backgrounds. But all came from the same socio-ethnic group and all, upon reflection, considered their Jewish background or culture, and a shared cultural experience of discrimination in particular, to be the source of their commitment to

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<sup>28</sup> Rosanne Kennedy. "Memory, history and the law: testimony and collective memory in Holocaust and Stolen Generation trials." in *Memory and History: Understanding memory as source and subject*, ed. Joan Tumblety, (Abingdon: Routledge, 2013), 56-63.

<sup>29</sup> Michal Bosworth, "'Let me tell you ...': memory and the practice of oral history." in *Memory and History: Understanding memory as source and subject*, ed. Joan Tumblety, (Abingdon: Routledge, 2013), 19-21.

use the law to secure rights for workers, women, African Americans and political activists. Their oral histories attest to a commonality of identification and intent, where family and cultural values form the basis of a political ideology, revealing broader social change. “If culture is a kind of resource and society is the arena in which that resource is used”, as Sidney Mintz suggested, then Jewish culture was the resource upon which these Jewish lawyers drew and the law was the weapon they wielded in the arena that was the struggle for civil rights.<sup>30</sup> Most significantly the individual stories of civil rights lawyers presented here, when taken together, address the gap in the legal and social historiography and in doing so represents a critical intervention in American civil rights history.

Periodizing the activism of these lawyers reveals how they shaped and were shaped by an evolving American rights agenda. Beginning with the New Deal and the Labor movement in the mid 1930s to early 1940s, one begins to see an emerging civil rights movement rooted in the struggle for economic equality, and one in which race was a component, but not a primary factor. The narratives of these lawyers attest to how their culture and their own marginalized status led them as Americans, to work through government and in the workplace, as advocates for those even more marginalized than themselves. Moving forward into the post-war period, drawing on the docket of *amicus* briefs filed by and held within the archives of the three main Jewish agencies, a shift can be seen from individual to group action, and on behalf of other groups, most significantly, but not solely, African Americans. These legal documents, memoranda and significantly, what was to become the constitution of the American Jewish Congress, demonstrate a commitment to law and social justice, the benefits of mutual interest and the recognition that equality for Jews would not be realized unless and until equality was achieved for all Americans. It also represents, as Chafe asserts, a shift from “economic and systemic” remedies towards “legal challenges within the constitutional structure, to patterns of segregation.”<sup>31</sup> The third period, or “classical” phase, characterized by activism and the strategy of direct action became a test for both the lawyers and the alliance.<sup>32</sup> Those Jewish lawyers who had been labor lawyers first and then constitutional litigators were to

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<sup>30</sup> S. Mintz quoted in James Hoopes, *Oral History: An Introduction for Students* (Chapel Hill: The University of North Carolina Press, 1979), 52.

<sup>31</sup> William H Chafe, “Race in America: The Ultimate Test of Liberalism,” in *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 166.

<sup>32</sup> Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past,” *Journal of American History*, Vol. 91, No. 4 (Mar. 2005): 1234.



become “movement lawyers.” Working through Jewish agencies and joined by a younger generation of Jewish lawyers and law students and in concert with a broad coalition of organizations, these lawyers met the challenge as they used the law creatively in support of those activists who took to the streets. While activists will be remembered for creating the moral legitimacy and political momentum of the long civil rights movement, Jewish lawyers were instrumental in creating the legal framework that supported it. Together they brought about a revolutionary reconstruction of American society.

## CHAPTER ONE: Jewish Civil Rights Lawyers: Who They Were and Where They Came From

“Tzedek Tzedek Tirdof — Justice, Justice Shall You Pursue...”

Deuteronomy 16:20

The New Deal and the labor movement were to provide the opportunities and the ideological basis from which emerged the Jewish civil rights lawyer. This chapter documents their beginnings, starting with where they came from, what factors influenced their choices and how they acted upon them in the 1930s and the first half of the 1940s. Given that the exercise of civil rights in a democracy has often meant testing the outer limits of the law, it has fallen to lawyers to aid in securing rights and to defend the rights of those who tested those limits. Throughout what Jacquelyn Dowd Hall has called “the long civil rights movement,” lawyers, as much as community leaders and activists, were at the forefront of the battle to secure and protect citizens’ rights as guaranteed in the Constitution.<sup>33</sup> And it is asserted here that the contribution of Jewish lawyers in particular, their motivations, strategies and their commitment to working within the law, is critical to an understanding of the achievements of America’s long civil rights movement.

The threads that bound these individuals were many. They acted professionally as lawyers, and as individuals, and shared a common commitment to civil liberties that was rooted in Jewish familial culture and the politics of Jewish immigrant communities. And through that shared culture, and in that shared commitment, they effectively constituted a group. They grew up in a liberal milieu in which ideas of equality and social justice were valued. Many were influenced by the legal scholars they encountered while studying law at Columbia, City College and New York University, as well as at Harvard and Yale, despite Jewish quotas. Among these academics were Morris Raphael Cohen, Alexander Mordecai Bickel, Herbert Weschler, Anthony Amsterdam, Felix Frankfurter, Abraham Goldstein and Joseph Goldstein, all Jewish. They were connected by the organizations they helped to create or to which they belonged, and by the issues of representation presented by the political climate and their political associations or beliefs. Their exclusion from Wall Street steered them towards the open door of the New Deal, the unions and labor law,

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<sup>33</sup> Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past,” *Journal of American History* Vol. 91, No. 4 (Mars. 2005): 1233-1235.

the legal departments of rights organizations, and the founding of their own firms. In New York, Carol Weiss King, who had attended Columbia and was influential in recruiting young lawyers to various rights causes, along with two other Jewish lawyers formed the firm of Shorr, Brodsky and King. They “handled cases for....anarchists, ...Communists,...and American Civil Liberties Union (ACLU) members.”<sup>34</sup> In Detroit, Ernie Goodman was active in the National Lawyers Guild (NLG), the United Auto Workers (UAW) and later was part of the first integrated law firm in Detroit. He “found his legs” as a labor and civil rights attorney in the Conference for the Protection of Civil Rights (CPCR) in 1935.<sup>35</sup> In California, the firm of Gladstein, Andersen and Leonard represented union activists and “routinely defended those charged with violations of the Smith Act,” a federal law which made it a criminal offense to belong to a group advocating the violent overthrow of the government.<sup>36</sup> It was used against union leaders, especially those who were or were believed to be members of the Communist Party.<sup>37</sup> Labor, the unions and the New Deal regime were to serve as the cornerstone of the modern civil rights movement; one in which these Jewish lawyers would continue to play a prominent role, whether as individuals or through group action.

The positing here, of specifically Jewish civil rights lawyers whose actions represented a collective contribution over a longer period, is supported by interviews conducted for this project, in conjunction with the oral histories obtained from the archives of various organizations and institutions. Taken together, the voices of these individuals from different eras creates a narrative that adds to and progresses beyond the current legal and social scholarship. To better understand how and why these individuals developed as they did it is imperative to situate them within the Jewish culture from which they emerged and as it was acted on by the larger American host culture. Thus it can be seen how these young Jewish lawyers were shaped by, and in turn helped to reshape, the social and political landscape of the America to which they belonged.

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<sup>34</sup> Ann Fagan Ginger, *Carol Weiss King, Human Rights Lawyer, 1895-1952* (Niwot, Colorado: University Press of Colorado, 1993), 72.

<sup>35</sup> Steve Babson, et al., *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University, 2010), 47- 49.

<sup>36</sup> John F. Galliher and Colin Wark, *Progressive Lawyers Under Siege: Moral Panic during the McCarthy Years* (Lanham, Maryland: Lexington Books, 2015), 8.

<sup>37</sup> Ibid.

Who were these lawyers who were to make such a difference to the achievement of rights in America? We know, from the established scholarship, especially biographies, that most Jewish civil rights lawyers were men, although Carol Weiss King and a relatively small number of women were notable exceptions.<sup>38</sup> We know that they were the sons of Eastern European and German immigrants, many of whom had fled the pogroms of Czarist Russia and later Nazi Germany. A few, not many, were second generation Americans. Their parents were more often than not Orthodox Jews, many of whom, but not all, shed their Orthodoxy, but not their Jewishness, after arriving in America. What this meant was that although they may not have been practicing Jews in the religious sense, they retained a Jewish cultural identity that influenced where they lived, what they read and what they believed. Many were socialists, some were communists, some were Zionists, some were liberals, and some had no political affiliation, but all had something in common; a sense of justice that emerged from Jewish culture, at the center of which was a belief in the equality of all people and the importance of social responsibility.<sup>39</sup> Recalling his neighborhood in the upper central Bronx, Jack Greenberg, who succeeded Thurgood Marshall as Director-Counsel of the NAACP Legal Defense and Education Fund Inc. (LDF) said, “We lived in a neighborhood where Communists were numerous...My father was among the few adults among neighbors I knew who were anti-Communist,[...]”<sup>40</sup> All, though, believed America held a promise of something better.

These newly arrived immigrants, were, more often than not, poorly educated, but education was paramount for their children. “From the day I was born,” Greenberg recalled, his mother “...saved fifty cents a week at the Metropolitan Life Insurance Company so that he [I] would have tuition to go to Columbia...”<sup>41</sup> “My parents,” he wrote, “inculcated in me an abiding concern for those who are disadvantaged, which I later focused on the race issue.”<sup>42</sup> These first generation Americans grew up, not in the shtetls of Russia or Poland, but in what amounted to ghettos, neighborhoods defined by or

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<sup>38</sup> This under-representation of women, though, was true of the entire legal profession as late as the 1960s and also applies to minorities, significantly blacks.

<sup>39</sup> Jonathan Kaufman, *Broken Alliance: The Turbulent Times between Blacks and Jews in America* (New York: Simon and Schuster, 1988), 25-27.

<sup>40</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution*, (New York: Basic Books, 1994), 48.

<sup>41</sup> *Ibid.*, 46.

<sup>42</sup> *Ibid.*, 47.

circumscribed by ethnicity, in Brooklyn, the Bronx, New York, Chicago, Detroit and other American cities. “My parents came from Russia,” said Ernie Goodman, speaking about growing up in Detroit. “I lived a life of a young Jewish kid growing up...it was always the Jewish community living in the ghetto.”<sup>43</sup> They were called “kike” and “Yid”. In an interview cited in *Marching with Dr. King, Ralph Helstein and the United Packinghouse Workers of America*, Helstein, general counsel to the union and later its president, recalled, “As I was growing up, I had a strong feeling about this question of discrimination. Part of it may be because I was Jewish and when I was a kid, the kids would go along yelling ‘sheeny’ and I’d be excluded.”<sup>44</sup> They were beaten up and beat up others in turn. Goodman, who knew few Gentiles until he attended Detroit’s Central High remembers being “... singled out as Jewish,” and gaining the protection of Jewish toughs in a battle he described as WASPs v. Jews, which, he said, opened his eyes to the nature of society.<sup>45</sup> They understood themselves to be different, but also American. They were somehow part of the social fabric, and yet their Jewishness set them apart, somewhere on the margins, along with other marginalized Americans, whose causes they took up as their own.

Out of a Jewish tradition that commands the moral pursuit of justice and of a socialist immigrant influence, the commitment to civil rights and civil liberties emerged. Asking himself the question of whether being a Jew had anything to do with his becoming a civil rights lawyer, Greenberg’s answer was an unequivocal, “Of course it did.”

<sup>46</sup>Reflecting on his own experience as LDF’s Assistant Counsel during the 1960s and 1970s, Michael Meltsner makes precisely that connection with his upbringing in an interview conducted for this project. “I grew up in a culture, and in a sub-culture and in a family, where ethical issues and human rights were significantly discussed and passionately cared about,” he said. “In the world of Jewish Americans, it’s kind of an easy step to say, look, these are people of the book, they follow the Torah and the ‘law’ and when they want to be Americans, and perhaps to avoid anti-Semitism to a certain extent, be full scale Americans like many immigrant groups always want to be in America, they

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<sup>43</sup> Ernest Goodman, Detroit Urban League Oral History Project, August 2, 1990, Ernest Goodman Papers, Part II, Series VII, Box 94, Folder 2, Interviews with Ernest Goodman, Walter P. Reuther Library, Wayne State University, Detroit, 1-2.

<sup>44</sup> Cyril Robinson, *Marching With Dr. King: Ralph Helstein and the United Packinghouse Workers of America* (Santa Barbara: Praeger, 2011), 11.

<sup>45</sup> Ernest Goodman, Detroit Urban League Oral History Project, August 2, 1990, Ernest Goodman Papers, Series VII, Box 94, Folder 2, Walter P. Reuther Library, Wayne State University, Detroit, 3-4.

<sup>46</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 50.

took on the Constitution. They became constitutionalists. They became human rights advocates. They became people who believed in basic rights, the Bill of Rights, freedom of speech and so forth.”<sup>47</sup>

Rather than internalizing the principles of American democracy, as Hasia Diner suggests, these Jewish lawyers, having internalized the tenets of Judaism, filtered them through an American experience, which led them to identify with those even more marginalized than themselves and so to civil rights lawyering. If an American identity was the result, then it was a by-product of an interaction between Jewish culture and American culture. These lawyers were not cloaking themselves in the flag, rather they were picking it up and waving it in the face of those Americans who had, in their view, abandoned or chosen to ignore the values of the Constitution.

In documenting the involvement of Jews, and not just Jewish lawyers, in the civil rights movement, Jonathan Kaufman cites three factors: “the flood of Jewish immigrants from Eastern Europe that began in the later part of the nineteenth century, the rise of anti-Semitism in the United States, and the discovery of the Holocaust in Europe.”<sup>48</sup> It is hard to imagine that those factors had no bearing, but the relationship of Jewish Americans to civil liberties and civil rights was historically more complex, and it developed over a longer period. While Jewish immigration and Black migration to the urban North occurred during the same period, Blacks and Jews did not live in the same space and rarely competed for the same jobs.<sup>49</sup> Regardless of the city in which they lived, Jewish immigrants lived in America’s version of the shtetl, or ghetto which served to physically and culturally confirm their status as outsiders. Blacks also occupied their own space. For both Blacks and Jews, their ethnicity or race, language and restrictive housing covenants confined them to the ghetto which reinforced their status as outsiders, but also offered the security of group culture and in the case of Jewish immigrants, a common language. When we turn to the Detroit Urban League Oral History Archive we see a more complex picture emerging as remembered by Ernest Goodman. “I lived this kind of a life, Jewish life within itself. I didn’t know any Gentile people, hardly at all....it was always the Jewish community living in the ghetto...there were always black people living near us but in their

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<sup>47</sup> Michael Meltsner, telephone interview with Linda Albin, 21 July 2016, 4.

<sup>48</sup> Jonathan Kaufman, *Broken Alliance: The Turbulent Times between Blacks and Jews in America* (New York: Simon and Schuster, 1988), 23.

<sup>49</sup> Hasia R. Diner, “Between Words and Deeds: Jews and Blacks in America, 1880-1935,” *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the United States*, eds. Jack Salzman and Cornell West (New York: Oxford University Press, 1997), 98.

own little ghetto.”<sup>50</sup> And speaking of his time at Central High in Detroit Goodman recalled that even when he entered a larger non-Jewish society he took with him his sense of not belonging: “I went through there and the experiences there are tied into the Jewishness of my life. Especially being singled out as Jewish and not being able to participate in the life of the non-Jewish students who politically ran the school.”<sup>51</sup> Jews knew Jews. Their parents lived together in the same neighborhoods, and prayed together, or at least attended the same synagogues. They read the Yiddish press, belonged to The Workmen’s Circle or Der Arbeiter Ring, and The Young People’s Socialist League (YPSL). They came, many of them, from a politically liberal or socialist milieu. They went to some of the same schools and later, entered through the doors of the New Deal together. They set up in practice together and armed with the tenets of Jewish culture and the law, entered the fray that was the struggle for rights in America. What Goodman learned, and what he tells us, is that the Jewishness which set him apart, was also the means by which he and other Jews re-entered the social and political landscape of America equipped with the tools to change it.

It is not entirely clear why these young Jews chose the law. And by their own admission, not all of them were initially drawn to civil rights lawyering. However, their narratives attest to the fact that their “Jewishness” and sense of exclusion was somehow the common thread that led them to use their skills in the pursuit of social, economic and racial justice. What is evident is that the ethnicity which excluded them from the elite Wall Street type firms and steered them towards the opportunities and idealism of the New Deal’s social reform agenda was a lesson in how the law could be used as an instrument for social change. In the 1930s, it was the New Deal which provided them the opportunity to exercise their ideological beliefs and hone their organizational and legal skills.

### **The New Dealers**

Jewish lawyers, who had found themselves deposited on the outside by hierarchical and discriminatory elite learning and legal institutions, were about to set out on a long march that we now know was the starting point of a longer civil rights movement. The New Deal was their port of embarkation. Historians, including Jerold Auerbach and Leonard

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<sup>50</sup> Ernest Goodman, Detroit Urban League Oral History Project, August 2, 1990, Ernest Goodman Papers, Series VII, Box 94, Folder 2, 2. Walter P. Reuther Library, Wayne State University, Detroit, 2-4.

<sup>51</sup> Ibid.

Dinnerstein, have chronicled the exclusion of Jews from the top law schools and top law firms. “Shunned by the most prestigious and anti-Semitic Protestant law firms,” writes Dinnerstein, “the New Deal needed legal talent, and Jewish lawyers needed the jobs that the New Deal provided.”<sup>52</sup> The remarks of a lawyer cited by Auerbach sums up a system that operated not unlike an exclusive country club with restricted membership and one which was under threat from a small army of lawyers whose names reflected their roots. As one lawyer put it, “it was a system in which “Cromwells and Cravaths rose to the top and “Hebrews” sank to the bottom.”<sup>53</sup> The reference to Cravath is not without its irony given that the “Cravath System” posited a merit based, “supposedly a-religious organizational structure.”<sup>54</sup> And yet, according to Robert Swaine, “85% of the Cravath partners graduated from either Harvard, Columbia or Yale law schools as of 1948.”<sup>55</sup> As Auerbach, Dinnerstein and other historians have chronicled, as well as from the testimony of Jewish lawyers who came of age in the 1930s and 40s, Jews were largely, although not entirely, excluded from the more elite institutions of higher learning and the large Wall Street firms.

As Babson, et al. suggest, “American society reserved a sort of caste distinction for those whose history and culture set them apart.”<sup>56</sup> But in FDR’s New Deal, Jews could and did rise to the top. As Laura Kalman notes, “Jewish law review editors who had pounded the pavements of Wall Street could find challenging positions in Washington, and as the capital accepted them, they became more assimilated.”<sup>57</sup> In Kalman’s view then, the New Deal became a vehicle for assimilation. However, it was not so much that Jewish lawyers became more assimilated in Washington, as Kalman argued, but rather as their Jewishness became less of a political impediment, they became more integrated into American institutions. The New Deal’s urgent demand for lawyers and its ecumenical approach to hiring actually resulted in a disproportionately large number of Jews finding positions. It was a natural fit for young men who had grown up in a milieu that could be described as

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<sup>52</sup> Leonard Dinnerstein, “Jews and the New Deal,” *American Jewish History*, Vol. 72, No. 4 (June 1983), 464. <https://www.jstor.org/stable/i23882503>. (accessed November 2016).

<sup>53</sup> *Ibid.*, 26.

<sup>54</sup> Eli Wald, “The Rise and Fall of the WASP and Jewish Law Firms”, *Stanford Law Review*, Vol. 60, No. 6 (April 2008), 1810. <https://www.stanfordlawreview.org/print/article/the-rise-and-fall-of-the-wasp-and-jewish-law-firms/>. (accessed 21 June 2018).

<sup>55</sup> R. Swaine quoted in Eli Wald, “The Rise and Fall of the WASP and Jewish Law Firms”, *Stanford Law Review*, Vol. 60, No. 6 (April 2008), 1807.

<sup>56</sup> Steve Babson et al., *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University Press, 2010), 20.

<sup>57</sup> Laura Kalman, *Abe Fortas, A Biography* (New Haven and London: Yale University Press, 1990), 28.



social liberalism. In his study, “Roosevelt, Truman and the Democratic Party, 1932-52,” Alonzo Hamby tells us that Jews suddenly found friends in Washington, as did Catholics. However, speaking of Jews, Hamby asserted, “...on the whole they [Jews] were more likely than Catholics to be drawn to FDR by a liberal ideology.”<sup>58</sup>

The New Deal, according to Robert W. Gordon, was itself, “a vast employment program for lawyers.”<sup>59</sup> Significantly he suggests that “...the New Deal used much the same meritocratic criteria as big firms, except they discriminated much less against Jews, Catholics, women, (occasional African Americans, and lawyers with overtly left-wing political views).”<sup>60</sup> And while FDR’s administration opened its doors to Jews, this disproportionate representation gave rise to what Hamby refers to as, “mutterings...that the New Deal was a Jew Deal.”<sup>61</sup> That sentiment was not lost on Jerome Frank, a Jewish lawyer who’d come to Washington from a Wall Street firm and who was concerned about “the numbers of “Palestinian wetbacks” he’d hired at the Agricultural Adjustment Administration because his superiors were watching him for signs of favoritism.”<sup>62</sup> As Laura Kalman refers to it in her biography of Abe Fortas, “The perennial problem soon arose: the most qualified individuals, for the most part were Jews.”<sup>63</sup> Harold Ickes, in reorganising the Bituminous Coal Division appointed Fortas, a Jew, as its chief counsel, insisting that Jews predominated only in the legal staff and so “defended their presence there.”<sup>64</sup> The fact that Jews were restricted or limited to a particular department somehow justified their disproportionate presence. And yet, Fortas’s way of dealing with this apparent imbalance, after a cadre of young Jewish law review men was brought on board, was to suggest, “...but could you hire some Gentiles?”<sup>65</sup> Eugene Cotton, a Jewish lawyer at the New York State Labor Relations Board in the late 1930s, was passed over for a promotion because, as he recalled, the top three jobs in the agency would then be filled by

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<sup>58</sup> Alonzo L. Hamby, “High Tide: Roosevelt, Truman, and the Democratic Party, 1932-1952”, *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 38.

<sup>59</sup> Robert G. Gordon, “The American Legal Profession, 1870-2000”, *The Cambridge History of Law in America, Volume III, The Twentieth Century and After (1920-)*, ed. Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 104.

<sup>60</sup> Ibid.

<sup>61</sup> Alonzo L. Hamby, “High Tide: Roosevelt, Truman, and the Democratic Party, 1932-1952”, *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 38.

<sup>62</sup> Laura Kalman, *Abe Fortas, A Biography* (New Haven and London: Yale University Press, 1990), 28.

<sup>63</sup> Ibid., 68.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., 69.

Jews. “I’d been told basically that you can’t have a job because you’re Jewish.”<sup>66</sup>

Marginalized by a hierarchical system which sought to exclude them, these same Jews, who’d entered through the New Deal’s meritocratic open door, were so sensitive to how their disproportionately large numbers and significant roles might be viewed that they sought to lessen their visibility with a kind of self-imposed quota system.

Increasingly Hamby tells us, these Jewish New Deal lawyers “identified themselves with the causes of (racial) civil rights and expanded civil liberties.”<sup>67</sup> In fact race, as a burning issue, as will be seen, was to figure later. But what we do know from those Jewish lawyers who took up posts in the administration was that suddenly they felt themselves to be part of a great upheaval that would re-order society in favor of the most marginalized. At the Department of the Interior, Dinnerstein observes, Jews “absolutely dominated American Indian policy...The real architect of the Indian New Deal was Felix Cohen, a militant New York attorney, and son of Morris Raphael Cohen, the great guru of City College.”<sup>68</sup> Cohen wrote the legislation with a Romanian born Jewish lawyer who authored the Margold Report, which NAACP and LDF lawyers used and adapted as they pursued a campaign against segregation. Abe Fortas, who was to become a Supreme Court justice recalled, “[We] could see the new world and feel it taking form under our hands.”<sup>69</sup> Said another Jewish graduate of New York City College, along with Columbia a hothouse for emerging Jewish legal talent, “...you were part of a society that was on the move. You were involved in something that could be changed. So could the conditions of people.”<sup>70</sup> These, then, were lawyers as social engineers, bent on constructing a more just society. Results were what counted and government lawyers were in a position to use the law as a tool for social change. And while the broad historical context in which these lawyers operated is recognized, historians have yet to provide a clear sense of how they together made history.

While scholars, including Nancy Weiss, Laura Kalman and Cyril Robinson and others have documented the key role played by Jewish culture in the lives and on the

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<sup>66</sup> Eugene Cotton, Interview with Cyril Robinson, [printed from disk], #2, March 14, 1995, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale. Box 1, Folder 67, 272.

<sup>67</sup> Alonzo L. Hamby, “High Tide: Roosevelt, Truman, and the Democratic Party, 1932-1952”, *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 39.

<sup>68</sup> Leonard Dinnerstein, “Jews and the New Deal,” *American Jewish History*, Vol. 72, No. 4 (June 1983), 465.

<sup>69</sup> Laura Kalman, *Abe Fortas, A Biography* (New Haven and London: Yale University Press, 1990), 28.

<sup>70</sup> Leonard Dinnerstein, “Jews and the New Deal”, *American Jewish History* Vol. 72, No. 4 (June 1983), 464.

careers of individual Jewish lawyers and judges, they have not presented them as a group or as cohorts. The failure to do so obscures a collective effort resulting in contributions to a longer civil rights movement. Beginning in the 1930s we begin to see how their Jewishness, which set them apart, also gave them the means with which to navigate an America that sought to exclude them. Their experiences, as described in their individual narratives, shows how, as a group, these marginalized Americans used the law to change the social landscape and the legal history of America.

An example of this can be seen in the experiences of Eugene Cotton, a former general counsel to the United Packinghouse Workers of America (UPWA) and who grew up in what he described as a “Yiddish background [...] and the atmosphere of the Jewish socialist movement.”<sup>71</sup> In a series of interviews, Cotton, one of the many Jewish lawyers who came up through the New Deal, recalled being “strongly pro-labor, pro-civil rights and strongly pro-New Deal [...] I was strongly in favor of the kinds of government action that were being taken by the New Deal, and in my mind were being taken for the purpose of the expected consequence[...] of doing good for the disenfranchized. For the victims of society.”<sup>72</sup> Cotton’s predecessor was Ralph Helstein, another Jewish lawyer. Raised in an Orthodox home, Helstein saw his own, as he put it, “moral urge”<sup>73</sup> as a “reflection of his [my] family’s strong drives toward a responsibility to the community. And the sort of thing that came out of the Jewish immigrant background, you know, and a moral responsibility to, uh, do good—[...] you had an obligation to help people.”<sup>74</sup> The testimony of these Jewish lawyers, many of them first generation Americans, supports the view that they were instilled with a sense of what America could and should be, by parents who brought with them and inculcated in their children a sense of social responsibility, albeit filtered through a thoroughly American experience.

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<sup>71</sup> Cyril Robinson, *Marching With Dr. King: Ralph Helstein and the United Packinghouse Workers of America* (Santa Barbara: Praeger, 2011), 45.

<sup>72</sup> Eugene Cotton, Interview by Cyril Robinson, [printed from disk], #2, March 14, 1995, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale. Box 1, Folder 67, 258.

<sup>73</sup> Ralph Helstein, Interviewed by Eliot Wigginton, transcript, May 4, 1981, Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale, Folder 41, 2.

<sup>74</sup> Ibid.

## Labor, The Unions and the Law

It was workers' justice that first engaged a generation of Jewish lawyers. Despite Hamby's assertion that New Deal lawyers identified themselves with the cause of race-based civil rights, Auerbach tells us that, "Civil rights law was a delayed fuse that sputtered throughout the 1930s."<sup>75</sup> Cotton would appear to confirm that civil rights, as they are now thought of, were not a priority when he stated, "... I was taken up with the labor movement and the New Deal, and the problem of civil liberties in the legal sense, civil rights as such, that is the voting rights, were no part of my consciousness,...there had not yet developed any real movement for what we think of as the civil rights movement."<sup>76</sup> It was the plight of the worker and an emerging labor movement that attracted these young lawyers to the barely recognized field of labor law.<sup>77</sup>

Cotton, in the Robinson interview transcripts, remembered the first ten years out of law school as "the most exciting periods of his [my] life."<sup>78</sup> During this period, beginning in the late 1930s and into the early 1940s, Cotton served first on the state labor board in New York and then as assistant counsel to the Congress of Industrial Organizations (CIO). On the one hand, he recalled the headiness in being able to bring down a bank, and on the other, his round the clock meetings with angry, disappointed steel workers, trying to explain why the back pay they'd been awarded amounted to so little. And he remembered in graphic detail the inequality of who held the balance of power when he found himself the only lawyer representing workers, pitted against about "two to three hundred company lawyers."<sup>79</sup> This awareness of who held the power and what it meant for society was not lost on Ralph Helstein who became a lawyer for the CIO in 1937. In an interview conducted by Eliot Wigginton in 1981 he recalled, "I began to translate into human and emotional terms many of these intellectual concepts about the relationships of power and

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<sup>75</sup> Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 217.

<sup>76</sup> Eugene Cotton, interview with Cyril Robinson, March 19, 1995, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale, Box 1, Folder 67, 259.

<sup>77</sup> Victor Rabinowitz notes that the *Federal Digest*, published between 1938 and 1940, and which contains listings of federal cases, "[...] had no classification for labor law, and cases relating to labor unions or collective bargaining ..." Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana and Chicago: University of Illinois Press, 1996), 332.

<sup>78</sup> Eugene Cotton, interview with Cyril Robinson, March 14, 1995, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale, Box 1, Folder 67, 261.

<sup>79</sup> *Ibid.*, 262.

politics...”<sup>80</sup> Two years later Helstein was putting into practice what he had intellectualized: justice for workers. In January 1939 he negotiated the first guaranteed annual wage contract in packing for workers at the Hormel plant in Austin, Minnesota. In 1942 he was asked to become the attorney for the United Packinghouse Workers of America (UPWA).<sup>81</sup> The National Labor Relations Act and the ethos of an emerging labor movement espousing equality for its increasingly diversified workforce were a natural fit for New Dealers and particularly for progressive Jewish lawyers.

The National Labor Relations Act, signed by President Roosevelt in 1933, giving workers the right to organize and to bargain collectively, gave labor lawyers the ammunition they needed to organize and negotiate on behalf of America’s workforce. For many of these lawyers, their political ideologies or affiliations drew them to the defense of workers’ rights. Typical of such individuals were Morton or “Morty” Stavis and Victor Rabinowitz. Stavis’s given name, Moses Stavisky, a clear identifier of his ethnicity, was a potential impediment to employment. Failing in his bid to join a Wall Street firm, Stavis went to Washington where he began his career as a labor lawyer, coming up through the New Deal, like so many other Jewish lawyers in the 1930s. Stavis served in the Roosevelt administration and as an assistant to Senator Robert Wagner, sponsor of the Social Security Act and the National Labor Relations Act. He returned to New York to represent the interests of the unions.<sup>82</sup> Victor Rabinowitz, to whom labor law was as “romantic and exciting,” and who began his career with the left wing labor firm of Boudin, Cohn and Glickstein asserted in his memoir that the cases which were precipitated by unionism and the New Deal, “transformed the American legal structure [...]”<sup>83</sup>

The contribution of Jewish lawyers to the labor movement was significant. In *Marching with Dr. King*, Cyril D. Robinson wrote that after World War II, “... politically progressive political parties and movements had disproportionately large Jewish memberships.”<sup>84</sup> But in discussing unions, it wasn’t the rank and file membership to which

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<sup>80</sup> Ralph Helstein, interview by Eliot Wigginton, transcript, May 4, 1981. Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale, Folder 41, 26.

<sup>81</sup> Ibid., 27.

<sup>82</sup> Bruce Lambert, Morton Stavis Obituary, *The New York Times*, December 18, 1992. <https://www.nytimes.com/1992/12/18/nyregion/morton-stavis-77-lawyer-active-in-variety-of-civil-liberties-cases.html>. (accessed 22 February 2016).

<sup>83</sup> Victor Rabinowitz, *Unrepentant Leftist: A Lawyer’s Memoir* (Urbana and Chicago: University of Illinois Press, 1996), 18, 331.

<sup>84</sup> Cyril D. Robinson, *Marching With Dr. King: Ralph Helstein and the United Packinghouse Workers of America* (Santa Barbara and Denver: Praeger, 2011), 44.

Robinson referred, but rather the leadership. The under-representation within the rank and file appears to have obscured the significant role played by Jews in leadership roles, including lawyers. Citing as an example the United Packinghouse Workers of America, Robinson suggests that it is not surprising “that a union that professed and acted upon ideals of racial and gender equality and working class advancement should attract Jews to leadership posts.”<sup>85</sup> This observation was based on the premise that many came from working class backgrounds and were the children of Eastern European Jews influenced by socialism. Helstein, who asserted that his “Talmudic training stood him in good stead” when it came to negotiating, was first general counsel and then President of the United Packinghouse Workers of America (UPWA);<sup>86</sup> Norman Dolnick was former editor and legislative director for the CIO Packing Division of the United Food and Commercial Workers, AFL-CIO; Herbert March was a union organizer, committed communist and lawyer; Lee Pressman served as attorney to the CIO;<sup>87</sup> Maurice Sugar was lead attorney for the United Auto Workers; and Ernie Goodman, who joined Sugar’s Detroit practice, was a labor and civil rights lawyer whose career spanned more than fifty years.<sup>88</sup> Just as Nancy Weiss suggested that the crucial role played by Jews in the legal history of the NAACP’s legal activities was more important than numbers (although in the arena of law the numbers were disproportionately large), Marshall Stevenson tells us that the significant role played by Jews in the unions’ leadership was more important than their much smaller representation in the rank and file would suggest.<sup>89</sup> Both Weiss and Stevenson, can be seen to agree that the Jewish contribution, often made by lawyers, to the achievement of “rights”, was crucial, regardless of their numerical representation.<sup>90</sup>

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<sup>85</sup> Ibid.

<sup>86</sup> Ralph Helstein, interview by Eliot Wigginton, transcript, May 4, 1981, Side 5, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale, Folder 41, 52.

<sup>87</sup> Cyril Robinson, *Marching With Dr. King: Ralph Helstein and the United Packinghouse Workers of America* (Santa Barbara and Denver: Praeger, 2011), 44.

<sup>88</sup> Steve Babson, Dave Riddle, David Elsila, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University Press, 2010), 38-45.

<sup>89</sup> Marshall F. Stevenson Jr., “African Americans and Jews in Organized Labor. A Case Study of Detroit 1920-1950,” in *African Americans and Jews in the Twentieth Century: Studies in Convergence and Conflict*, ed. V. P. Franklin, Nancy L. Grant, Harold M. Kletnick and Genna Rae McNeil (Columbia and London: University of Missouri Press, 1998), 246.

<sup>90</sup> Nancy J. Weiss, “Long-Distance Runners of the Civil Rights Movement: The Contribution of Jews to the NAACP and the National Urban League in the Early Twentieth Century”, *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the The United States*, ed. Jack Salzman and Cornell West (New York and Oxford: Oxford University Press, 1997), 130.

Detroit, beginning the late 1930s, was to provide fertile ground in which the Black-Jewish alliance would flourish. America's Motor City was the turf on which some of the most seminal battles for workers' rights were fought, on the factory floor and in the courts, after the Depression and later against the backdrop of the Cold War. Writing about that period, Heather Ann Thompson portrays Detroit as politically contested terrain. In the wake of the Depression, she tells us, "...communists, socialists, right-wing populists, and left - as well as right-leaning liberals vied for political control."<sup>91</sup> However, more significantly, she suggests some of those groups engendered "...a cross fertilization of [their] seemingly incompatible agendas..." giving weight to the postulation of a Black-Jewish 'alliance' forged out of self-interest as much as sympathy.<sup>92</sup> With FDR's New Deal, Detroit became a city of competing agendas, but also one of cooperation, opportunity and possibilities. "Progressive industrial unions in the auto, electrical, rubber, and textile industries," were, according to William Chafe, "key to the success of a biracial coalition."<sup>93</sup> However, as it will be shown here, the unions as well as progressive lawyers, were to become the victims of anti-communist purges that contributed to the shift away from the pursuit of economic rights as a means of addressing social inequality in favor of race-based rights. Therefore it is necessary to examine the communist influence on African American and Jewish workers within the context of the unions and their leadership.

### **The Red Scare, and The Shift from Labor to Race-based Rights**

The Cold War had a devastating effect on the labor movement, its leadership, and individual lawyers, many of whom were Jews. Further, the resulting decline in the power of the movement and the unions, was to contribute to a re-ordering of America's rights' agenda. The hunt for and harassment of suspected communist sympathizers within the unions by the Federal Bureau of Investigation (FBI) and the House Un-American Activities Committee (HUAC), was to an extent, a reaction to the recruitment activities of communist party organizers.<sup>94</sup> The party, which had close ties with both the CIO and

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<sup>91</sup> Heather Ann Thompson, *Whose Detroit? Politics, Labor and Race in a Modern American City* (New York: Cornell University Press, 2001), 13.

<sup>92</sup> Ibid.

<sup>93</sup> William H. Chafe, "Race in America: The Ultimate Test of Liberalism," in *The Achievement of American Liberalism: The New Deal and its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 166.

<sup>94</sup> The House Un-American Activities Committee (HUAC), was created in 1938 to investigate those suspected of disloyalty and of having ties to the Communist Party. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 120-123.

UAW, were, according to Marshall Stevenson, “the staunchest promoters of racial equality in the CIO,” and so went about recruiting both Jews and Blacks by working within the community.<sup>95</sup> Labor historian Nelson Lichtenstein stated that, “By the mid 1930s, they [communists] were the largest ideological group from which the CIO drew its shop floor cadre and union organizers.”<sup>96</sup> But just as the city of Detroit was contested turf so too were the unions, which made them particularly vulnerable to the threat of red baiting both internally and externally. In the 1930s and 1940s, and especially in the 1950s, the lawyers who were brave enough to defend those alleged to have broken the law, many of whom were Jews, became “pariahs” in their own profession.<sup>97</sup> “Labor unions,” said Goodman, “were considered Communist instruments at that time.”<sup>98</sup>

Significantly, the efforts to expose communist influence exacerbated existing splits within the union leadership. This resulted in power struggles that fomented distrust which served to weaken the unions as a force with which to be reckoned. In the view of Arthur Kinoy, a Jewish labor lawyer who represented a communist labelled union, and who defended witnesses called before HUAC, politicians in league with industry used the “whole question of the fear of Russia and the Communists as the excuse for smashing down on our own trade unions.”<sup>99</sup> He, like many of the lawyers who represented labor interests were themselves targeted by the FBI.<sup>100</sup> Union lawyers and leaders like Ralph Helstein at the UPWA and Maurice Sugar at the UAW, both of whom were Jewish but neither of whom were communists (although Sugar was a socialist and ideological Marxist), found themselves constantly having to walk a tightrope to maintain unity within their organizations. They also had to watch their own backs while attempting to remain true to their convictions, sometimes, but not always successfully. Sugar, who had come under considerable pressure from those to the right within the leadership, fired Herb March

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<sup>95</sup> Marshall F. Stevenson, Jr., “African Americans and Jews in Organized Labor. A Case Study of Detroit 1920-1950,” *African Americans and Jews in the Twentieth Century: Studies in Convergence and Conflict*, ed. by V.P. Franklin, Nancy L. Grant, Harold M. Kletnick and Genna Rae McNeil (New York and London: University of Missouri Press, 1998), 241.

<sup>96</sup> Cyril Robinson, *Marching With Dr. King: Ralph Helstein and the United Packinghouse Workers of America* (Santa Barbara and Denver: Praeger, 2011), 99.

<sup>97</sup> Ernest Goodman, Detroit Urban League Oral History Project, August 2, 1990. Ernest Goodman Papers, Walter P. Reuther Library, Wayne State University, Series VII, Box 94, Folder 2 Interviews with Ernest Goodman, 10.

<sup>98</sup> Ibid.

<sup>99</sup> Arthur Kinoy, The National Security Archive, George Washington University, Gelman Library National Security Archive/COLD WAR/Interviews, November 1, 1998. <http://nsarchive.gwu.edu/coldwar/interviews/episode-6/kinoy1.html>. (accessed 24 August 2016).

<sup>100</sup> Arthur Kinoy, FBI files, 100-118562, Volumes No 01-09, Serials 1-100. <https://vault.fbi.gov/rosenberg-case/arthur-kinoy/>. (accessed 24 August 2016).



who had come out openly as a communist. In March's view, Sugar, unable to carry him any longer, "caved", as he put it.<sup>101</sup> But HUAC's zeal in pursuing suspected communists extended beyond the unions to the courts.

The fear of even the taint of communism, especially when it involved Jews, was to have devastating consequences for one of the most controversial and high profile cases in which Kinoy was involved; the last minute appeal to stay the execution of Julius and Ethel Rosenberg, convicted of having passed atomic secrets to the Soviets. Kinoy recalled having found a statute that supported the argument that to have ordered the execution was illegal and unconstitutional in the first instance. In an effort to stay the execution, Kinoy and his law partner Mike Pearlman, rushed to see the Chief Judge of the Court of Appeals. Judge Swann agreed, but said one more judge was needed and advised the two lawyers to go see Jerome Frank, a liberal judge, even lending them his limousine. The two made their argument, relatively confident that Frank would be persuaded. Instead the judge looked at them and said, according to Kinoy's recollection, "If I were as young as you are, I would be sitting here saying the same things you're saying, arguing the same points you're arguing, making the same argument that these executions are invalid, but when you are as old as I am, you will understand why I cannot do it."<sup>102</sup>

The two lawyers, along with a third, Sam Gruber, drove back to New York and heard on the radio that the Rosenbergs had been executed. But it wasn't until years later that Kinoy said he understood the 'why'; "Jerome Frank, as the leading liberal judge, was terrorized himself and frightened by the atmosphere of fear in the country, that if he as a liberal would do something to save Julius and Ethel Rosenberg's life, he would be charged as a Commie, ... but then I realized something else. Deep inside of me, I thought, since I always recognized I was a little Jewish boy from Brooklyn and Jerome Frank was Jewish,...that because Julius and Ethel were Jewish....the Jewish people would all be attacked as Commies and agents and aiders of the spies."<sup>103</sup> There is no hard evidence to support Kinoy's analysis. What is important is that Kinoy believed it. It is yet another example of how Jews, despite their increasing assimilation into mainstream American

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<sup>101</sup> Herb March, transcribed by Cyril Robinson, June 21, 1995, Cyril Robinson Labor History Research Collection, 1959-2011, Special Collections Research Center, Southern University Carbondale. Box 2, Item 42, 1083- 1093.

<sup>102</sup> Arthur Kinoy, The National Security Archive, The George Washington University, Gelman Library National Security Archive/COLD WAR/Interviews, November 1, 1998.

<http://nsarchive.gwu.edu/coldwar/interviews/episode-6/kinoy1.html>. (accessed 24 August 2016), 13.

<sup>103</sup> Ibid., 14.

society still saw themselves as outsiders, and so vulnerable. In some cases that sense of vulnerability dictated their actions.

The Cold War and the effects of HUAC's tactics were long lasting and far reaching with implications for the evolution of the political and legal landscape and the civil rights movement over the next three decades. Another victim or casualty of the Red Scare was the National Lawyers Guild (NLG). Many of the Jewish lawyers who represented the labor movement were members of the NLG and both they and the organization became targets of HUAC. Formed as an alternative to the American Bar Association, which did not admit Blacks, and in part a response to the Supreme Court's assault on New Deal legislation, the Guild enjoyed a heyday during World War II when Goodman says "the membership of the Guild grew tremendously."<sup>104</sup> By Goodman's account, members included prominent lawyers and judges. The Detroit Chapter alone, of which he was executive secretary, boasted a membership of 300 to 400 lawyers. But with the Cold War came the witch hunt, and with so many liberal and leftist lawyers among its members, the Guild "was attacked as a communist front organization, ...people just left by the droves," he said.<sup>105</sup> "The government attacked us with fury," remembered Victor Rabinowitz.<sup>106</sup> The allegations and innuendo were enough to leave a taint that was to stymie the efforts of the NLG as it sought to reconstitute itself in the lead up to Freedom Summer, as will be shown in Chapter 3.

The assault on union organizers and the progressive lawyers who represented them dealt a devastating blow to the labor movement and the practice of labor law. With the union leadership decimated, William Chafe concluded, "the focus on economic and systemic change as a solution to racial inequality faded into oblivion, and more and more of the energies of civil rights groups went into legal challenges, within the constitutional structure, to patterns of segregation."<sup>107</sup> However the consequences of this offensive were unpredictable and sometimes unintended. The Holocaust and the post-war era contributed to even greater cooperation between Black and Jewish organizations. And it is within the construct of that strengthened alliance that Jewish civil rights lawyers, as a group, made the transition from labor to race-based rights, through litigation and the courts.

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<sup>104</sup> Ernest Goodman, Interview for Guild Notes, Ernest Goodman Papers, Walter P. Reuther Library, Wayne State University, Series VII, Box 94, Folder 2, 7.

<sup>105</sup> Ibid., 9.

<sup>106</sup> Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Urbana and Chicago: University of Illinois Press, 1996), 171.

<sup>107</sup> Ibid.

## **Conclusion**

The period from 1933 to 1945 was as crucial to the emergence of the Jewish civil rights lawyer as the New Deal regime was exceptional within America's political, social and legal development. In making the case for the evolution of a Jewish civil rights lawyer this chapter has first staked out the ground from which they emerged. It has showed that they came of age within Jewish immigrant communities whose occupants had fled persecution in Eastern Europe, and as they established themselves in America's rapidly expanding urban centers. Their existence was circumscribed by their ethnicity. This was in part a matter of choice, but also a matter of exclusion. In America, the Jewish ghetto replaced the Jewish shtetls of Poland, Russia and Romania. These immigrants brought with them a shared experience of persecution, language, and religion. They also brought with them a social liberal ideology as well as a sense of justice rooted in Jewish culture, along with a belief that America offered opportunity through equality. The narratives and memoirs of lawyers interviewed for or used in this project, in conjunction with social and legal histories, reveal how they acquired the tools with which to navigate between this circumscribed existence and the social, cultural and political institutions of America. In the recollections of Eugene Cotton, Maurice Sugar and Michael Meltsner can be seen Jewish culture and community both as a resource and as an impediment.

This chapter has mapped the development of the Jewish lawyer in parallel with the shifting priorities of American democracy. The dislocation brought about by the Depression ushered in an administration in Washington committed to economic and social welfare and one which was willing to accommodate an increasingly pluralistic constituency. Although Jews were subjected to quotas at institutions of higher learning and effectively barred from Wall Street firms, the New Deal offered them opportunities to practice law. Many felt driven to use their new-found opportunities to address social injustice in America. Social welfare, workers' rights and labor law engaged this first generation of civil rights lawyers and within this context they made a collective contribution. This experience and a shift from economic to race-based rights laid the foundations for the development of the Jewish lawyer in the post-war period.

## CHAPTER TWO: Law and Social Action

Jewish lawyers who had previously worked within government and on behalf of the labor movement evolved into a different type of civil rights lawyer in the 1940s and 1950s. They became constitutional litigators. Working within the Jewish agencies they sought to reverse discrimination in law in concert with other minority groups. This engagement precipitated a new level of cooperation between Blacks and Jews in the struggle for civil rights, which was particularly evident in the area of litigation. Historians, including Hasia Diner and Clayborne Carson, have disagreed over the extent to which cooperation between Blacks and Jews was motivated by ethnic self-interest or an altruistic commitment to social justice.<sup>108</sup> But this approach should not be limited to a binary either/or: the evidence presented in this chapter demonstrates mutual self-interest in which can be found the basis of a Black-Jewish alliance.

The post-war era witnessed a “new departure of Jewish communal institutions in assuming an active role in American civic affairs,” wrote Arthur A. Goren.<sup>109</sup> “Community relations agencies, formerly almost exclusively concerned with discrimination against Jews, now entered the realm of social action in its broadest sense.”<sup>110</sup> Recourse to the Constitution and the courts became the primary means with which to reverse discrimination in law and to effect social change through group action. While the tensions in what may be described as an asymmetric alliance have been documented by Oscar Williams Jr., Philip S. Foner and others, so too have the efforts by Black and Jewish elites to address and, in some instances, downplay those differences, so important did they deem continued cooperation.<sup>111</sup> This strengthening of the alliance was

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<sup>108</sup> Clayborne Carson, “Black-Jewish Universalism in the Era of Identity Politics” in *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the United States*, ed. Jack Salzman and Cornel West (New York: Oxford University Press, 1997), 177-196. Hasia R. Diner, “Between Words and Deeds: Jews and Blacks in America, 1880-1935,” in *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in The United States*, ed. Jack Salzman and Cornell West (New York: Oxford University Press, 1997), 87-106. Hasia R. Diner, *In the Almost Promised Land: American Jews and Blacks, 1915-1935* (Baltimore: Johns Hopkins University Press, 1977).

<sup>109</sup> Arthur A. Goren, “A “Golden Decade” for American Jews: 1945-1955,” in *American Jewish History: A Thirteen Volume Series*. Vol. 4., edited by Jeffrey S. Gurock (New York: Routledge, 1998), 298.

<sup>110</sup> Ibid.

<sup>111</sup> Philip S. Foner, “Black-Jewish Relations in the Opening Years of the Twentieth Century” in *Strangers and Neighbors: Relations Between Blacks & Jews in the United States*, edited by Maurianne Adams & John Bracey (Amherst: University of Massachusetts Press, 1999), 237-244. Oscar R. Williams, Jr., “Historical Impressions of Black-Jewish Relations Prior to World War II,” in *Strangers and Neighbors: Relations between Blacks & Jews in the United States*, edited by Maurianne Adams, & John Bracey (Amherst: University of Massachusetts Press, 1999), 34-42.

due in part to a shift from economic to race and minority-based rights and the response of Blacks and Jews to the Holocaust. It also reflected the changing consciousness of the nation as a whole, as it moved towards a more representative pluralistic democracy. Both Blacks and Jews were keen to take advantage of this shift in the nation's mood which was evident in a Supreme Court more predisposed to individual rights.

This chapter demonstrates how, in the context of the rise in constitutional litigation facilitated by the change in temperament of the court, Jewish agencies set a social and legal agenda. Among them were the B'nai B'rith Anti-Defamation League (ADL), the American Jewish Congress (AJCongress), and the American Jewish Committee (AJC). All were established in the first quarter of the twentieth century by immigrants and first generation Jews, many of whom were lawyers, including Louis Marshall, Louis Brandeis, Felix Frankfurter and Sigmund Livingston. In organising themselves into formal groups, they established an identity that to an extent reinforced their separateness from white Christian America. But after the Holocaust, Jewish leaders used those same agencies to establish their credentials as fully-fledged Americans. They became more highly organized, establishing legal departments whose lawyers were at the forefront of constitutional litigation. At the same time they established and strengthened political alliances. They used the *amicus curiae* brief as a tool, working with other groups, through the courts, to bring about social change within an increasingly pluralistic America; one in which the impediments to those marginalized by their race and ethnicity could be challenged through the law.

The recognition of mutual self-interest, and how it worked to the benefit of Blacks and Jews, as well as other minority groups, is seen in an examination of *amicus* briefs filed by lawyers in a series of court cases relating to broad social rights issues during the 1940s and 1950s. Many of the briefs addressed discrimination in housing, public accommodation, education, employment, immigration and matters of separation of church and state. They were filed by lawyers working with the three main Jewish agencies in conjunction with the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), and the NAACP Legal Defense Fund (LDF). During this period the ADL filed no fewer than 15 briefs as *amici*, the AJC filed 20 and the AJCongress, the most prolific of the three, 39.<sup>112</sup> The briefs reflected the

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<sup>112</sup> Jill Donnie Synder and Eric K. Goodman, *The Anti-Defamation League of B'nai B'rith, Friend of the Court 1947-1982: To Secure Justice and Fair Treatment for All* (New York: Anti-Defamation League of B'nai B'rith, 1983). American Jewish Committee Legal Briefs, Listings of Briefs in Boxes 1-4, 1949-1962.

priorities established by these organizations, as well as the opportunities and limitations of the then current political climate. Where in the 1930s the federal government and the labor movement were the primary instigators of social change, the 1940s and 1950s witnessed a shift towards litigation and the courts.

*Amicus curiae* briefs offer an historical perspective on the way in which Jewish lawyers, identifying with and acting through the group, adapted and applied their skills to legal battles against institutional discrimination. They underscore a determination to advocate on behalf of other minorities even when Jewish interests were less directly affected. Further they reflect the “stalking horse” posited by Diner, by which Jews identified with and used the oppression of African Americans in order to further own their objectives.<sup>113</sup> But significantly they demonstrated a continued collective commitment to seek justice, fulfilling the Jewish commandment to do so. With rights came responsibilities, the achievement of which could only be realized when equality of opportunity was extended to all citizens. Three cases that bear closer scrutiny and will be examined in some detail in this chapter are *Shelley v. Kraemer*, a restrictive covenant case in which all three of the Jewish agencies filed *amicus* briefs and *Westminster School v. Mendez*, a school discrimination case in which the NAACP, AJCongress, ACLU and the National Lawyers Guild (NLG) were *amici*. A third case in which all of the Jewish agencies and many other rights groups were *amici* was *NAACP v. Alabama*, the case that ensued in response to the Southern states’ attempt to shut down the NAACP post-*Brown*.

The civil rights movement that began in the 1940s was, as posited by Cheryl Lynn Greenberg, “a cold war liberal attempt to end discrimination based on race or religion using the institutions of civil society; courts, legislatures, media, public schools and voluntary organizations.”<sup>114</sup> Restrictive covenants, quotas in institutions of higher learning and discrimination in employment were barriers erected against both Blacks and Jews and so lent themselves to a commonality of purpose which was to play out both in word and in deed within the legal arena. *Amicus* briefs offer a unique insight into how these organizations, through strengthened alliances, challenged discrimination in law and so brought about social change of benefit to all concerned parties. An architect of these

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Briefs Filed by the American Jewish Congress, 1945-1955. (Only the brief filed in the highest tribunal that considered the particular case is, however, listed) I-77 Box 151 Folder 4.

<sup>113</sup> Hasia R. Diner, *In the Almost Promised Land: American Jews and Blacks, 1915-1935* (Baltimore: Johns Hopkins University Press, 1977), 237.

<sup>114</sup> Cheryl Lynn Greenberg, *Troubling the Waters: Black-Jewish Relations in the American Century* (New Jersey: Princeton University Press, 2006), 114.

coalitions and an advocate of this strategy was Alexander Haim Pekelis, a Jewish jurist and human rights campaigner who had fled the Nazis.

### **Alexander Pekelis and Group Action in the Post War Period**

The law as the primary driver of social change, supported by group action, was central to Alexander Haim Pekelis's strategy for obtaining equality for all Americans, regardless of their race, religion or ethnicity. The legal assault on institutional discrimination he advocated was undertaken by Jewish groups in concert with other rights groups, with the objective of effecting social outcomes, significantly for African Americans. The enhanced cooperation that existed between Blacks and Jews in the post-war period, especially in the area of litigation, can of course be attributed to the change in temperament of the court, the rise of a public interest bar, and a growing awareness of race-based rights.<sup>115</sup> But it was also a direct result of the reaction of Jews and Blacks to the Holocaust. The successes enjoyed during the Roosevelt era and the opportunities generated by the New Deal led to Jews feeling less marginalized, more secure and so more American. But those Jews who fled Europe and the sons and daughters of these immigrants experienced a new sense of vulnerability as the horrors of the Holocaust were revealed. Security and individual equality were to be found in group identity, formalized in organizations and working in conjunction with other marginalized groups.

The reciprocity of skills and personnel, especially between the AJCongress and the NAACP legal departments, came to characterize the legal and political dimensions of this post-war alliance. The basis for such cooperation was found in what in what was, in effect, the constitution of the American Jewish Congress's Commission on Law and Social Action, (CLSA). "Full Equality in a Free Society: A Program for Jewish Action," written by Pekelis, was embraced to varying degrees by the other two Jewish agencies. It placed the Jew in relation to the Jewish community and as a citizen of America, as well as the world, with individual as well as group rights and responsibilities within a pluralistic America.<sup>116</sup> Equality in law and changes in social behavior could be achieved through

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<sup>115</sup> Cheryl Lynn Greenberg, *Troubling the Waters: Black-Jewish Relations in the American Century* (Princeton: Princeton University Press, 2006), 115-158. Jonathan Kaufman, *Broken Alliance: The Turbulent Times Between Blacks and Jews in America* (New York: Simon & Schuster, 1995), 85-96. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, Inc., 1990), 11-112. Clayborne Carson, "Black-Jewish Universalism in the Era of Identity Politics," ed. Jack Salzman and Cornel West (New York: Oxford University Press, 1997), 178,179.

<sup>116</sup> Alexander H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and*

“active alliance with all progressive and minority groups engaged in the building of a better America.”<sup>117</sup> Acting as individuals, within organizations and as lawyers, they had a responsibility to advance the African Americans’ struggle for equality as well as their own. As Pekelis stated, “While ours is a call for autonomous Jewish action, we do not forget that the peculiarity of Jewish interests lies in their inseparability from the universal cause of general human welfare.”<sup>118</sup> Jewish lawyers, in cooperation with others, sought redress in the courts to secure equality in housing, employment and education. In doing so they recast the institutions of American society in their most democratic forms.

It is the perception of a shared experience of oppression and a diasporic history that served to underpin the Black-Jewish alliance. Julian Bond described the coalition as “a relationship of intersecting agendas based on religious faith and a common heritage of oppression.”<sup>119</sup> In making the argument for autonomous and group action, Pekelis contended that it is a diasporic history that shapes the destiny of Jews in America. “...Simple historical facts that have imposed a common group destiny upon us,” he wrote, “call for an affirmative recognition and active expression of the full extent of our group existence.”<sup>120</sup> Pekelis was, first of all, referring to events which resulted in the fleeing or expulsion of Jews from countries or jurisdictions which left them stateless. But he was also suggesting a kind of internal diaspora that deposited Jews on the margins of the majority society in which they found themselves, including in America. By extension, that argument can be applied to African Americans, and as suggested by Julian Bond, points to a history that binds, rather than divides these peoples with their distinct experiences and cultures.

It was ultimately a battle for equality that required both Blacks and Jews to enter into a contract or covenant, in which social action and the law would become their double-edged sword. Writing about such diverse people, Eric Sundquist, in his exploration of Blacks and Jews in post-Holocaust America posited, “their primary identities derived from belonging not to a particular nation-state but instead to a religio-cultural diasporic “nation”, and ...in some instances have elected to define themselves, negatively - by anti-Semitism or

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*Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 218-259.

<sup>117</sup> *Ibid.*, 225.

<sup>118</sup> *Ibid.*

<sup>119</sup> Papers of Julian Bond, Accession #13347 Box 8, Folder 15 Drexel University Speech, 1989 in Special Collections, University of Virginia Library, Charlottesville, Va.

<sup>120</sup> Alexander H. Pekelis, “Full Equality in a Free Society: A Program for Jewish Action,” in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 220.



racism.”<sup>121</sup> It is in this negativity, not coincidentally coming at times of crises, that the way in which Blacks and Jews perceived their individual circumstances elicited a call for cooperation if not outright alliance. As Sundquist asserts: “Brought together by unpredictable and unsought necessity, Black and Jewish activists and intellectuals ... have discovered common sustenance in the paradigm of delivery into the Promised Land of democratic citizenship that America might provide.”<sup>122</sup>

Not all Blacks viewed African Americans and Jews as fellow sufferers. For both Harold Cruse and Malcolm X, the idea of a Black-Jewish alliance was a myth manufactured by elites. “What European Jews suffered in Europe has very little bearing on the American experience,” Cruse wrote, and dismissed as propaganda the notion of Blacks and Jews as “brother-sufferers.”<sup>123</sup> “*Jews have not suffered in the United States*,” he wrote.<sup>124</sup> Significantly, Jews chose America. They saw in it a refuge which offered the opportunity of equality and the full benefits of citizenship under the law, within a liberal democracy. They would pursue their American credentials by working within that paradigm. In contrast, African Americans were taken to America not to be citizens, but to be slaves, as Malcolm X made clear in a 1964 speech: “We are not Americans,” he said, adding, “We didn’t land on Plymouth Rock; the rock was landed on us.”<sup>125</sup> In Malcolm X and Cruse’s view, the forced migration of Africans to America during the Middle Passage rendered Africans a stateless people, defined by their status as slaves and always by their color. Neither embraced nor endorsed Pekelis’s model of a pluralistic America in which minorities could thrive.

Despite the tensions inherent in the relationship, the perception of a shared history of oppression on the part of many Blacks and Jews supported a functioning alliance. The communications and cooperation between African American and Jewish organizations in the 1940s and 1950s exemplified the workings of multidirectional memory and so superseded competition.<sup>126</sup> Blacks and Jews chose to emphasize what connected them

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<sup>121</sup> Eric J. Sundquist, *Strangers in the Land: Blacks, Jews, Post-Holocaust America* (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 2005), 18.

<sup>122</sup> *Ibid.*, 19.

<sup>123</sup> Harold Cruse, *The Crisis of the Negro Intellectual* (New York: New York Review Books, 1967), 482.

<sup>124</sup> *Ibid.*, 483. Italics attributable to Cruse.

<sup>125</sup> Malcolm X, “*It shall be the ballot or the bullet*,” Washington Heights, NY, March 29, 1964.

<http://websupport1.citytech.cuny.edu/Faculty/pcatapano/US2/US%20Documents/ballotorbullet.htm>

<sup>126</sup> Examples of such communication, including correspondence and newspaper articles, can be found in the Papers of the NAACP, Supplement to Part 16, Board of Directors Files, 1956-1965 and in the American Jewish Committee Records, Manuscript Collection-780, Box #E7, Folder #6. American Jewish Committee Archives, Civil Rights File, AJC Subject Files Collection, Memorandum on AJC’s civil rights activities for

rather than what divided them. They forged alliances of mutuality, however fragile. By retaining their specificities but moving beyond competition, they sought to realize the promise of American freedom and democracy. And at the center of the battle for those rights as guaranteed in the Constitution were the lawyers, who used the *amicus* brief as a tool with which to establish legal principle and as will be shown, changed the course of American legal and social history.

The relationship of the law to society and the use of the law in securing those rights as set out in the Constitution were key to Pekelis's model for law and social action. "Law without a knowledge of society is blind;" wrote Pekelis, "sociology without a knowledge of law, powerless."<sup>127</sup> As Milton Konvitz remarked in the introduction to a collection of Pekelis's essays, "he made a conscious effort to bridge the gap between, on the one hand, the law and, on the other hand, economics, politics, and sociology."<sup>128</sup> This then is the stuff of legal realism, or in Pekelis's own words, "a feeling for the dissonance between the abstractness of general rules and the individuality of concrete cases; and an awareness of the creative nature of the judicial function."<sup>129</sup> This perspective depends heavily on a creative use of the law and judicial interpretation within a sociological context. In stressing the importance of the group over individual rights and action, Pekelis asserted that the U.S.A. had "reached a stage of evolution in which group responsibility, social discrimination, and private injustice have become crucial political and legal and, in some senses, even constitutional problems."<sup>130</sup>

Situating the source of the threat to minorities in "the private" is key to how Pekelis shaped the CLSA's strategy. It was not the federal government that erected the barriers to achieving full equality, but rather what Pekelis called the "private governments" of America".<sup>131</sup> "In America, all Americans are equal - in the eyes of the law. The main threat to Jewish equality, the main danger to the American way of life, with liberty and justice for all," he wrote, "comes not from the police or the bureaucracy, as it used to come in Russia,

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1948. Also in the Papers of Julian Bond, Series 1, 13347 Box 8, Folder 15: Speech- Blacks and Jews: Historical Relationship, Drexel University, Philadelphia, Pennsylvania, 1989 May 25.

<sup>127</sup> Alexander H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 257.

<sup>128</sup> Alexander H. Pekelis, *Law and Social Action*, ed. Milton R. Konvitz, (Introduction) (New York: De Capo Press, 1970).

<sup>129</sup> Alexander H. Pekelis, "The Case for a Jurisprudence of Welfare: Possibilities and Limitations," in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 1-2.

<sup>130</sup> Alexander H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 227.

<sup>131</sup> *Ibid.*

Poland, or Germany—it comes from the forces of society itself.”<sup>132</sup> The distinction Pekelis made, and it is an important one, was that patterns of behavior in society were as dangerous as those behaviors exhibited by those in authority. Specifically he was referring to institutions that used the pretext of the private in order to legitimize their exclusionary practices. It must be noted however, that in the experience of African Americans, the threat came from both the state bureaucracy as well as from the “forces of society.” In the post-war years, Jews in America were feeling more American and yet less secure. The Holocaust was a reality. And while it happened somewhere else, it could happen anywhere. For Pekelis, Jewish security would be assured only when equality was extended to all citizens within the private and public sectors.

Equally concerned with the situation of the Jew in American civil society was Morris Cohen, a legal scholar, philosopher and academic. Unlike Pekelis, Cohen warned of the dangers of overstating the threat from anti-Semitism and of maintaining cultural ghettos. Born in Belarus in 1880, the Cohens fled the Tsarist pogroms, settling in New York in 1892 when Morris was just twelve.<sup>133</sup> Educated at City College in New York, Columbia and at Harvard, Cohen wrote several essays on the Jewish situation in America, published as *Reflections of a Wandering Jew* in 1950. Significantly the first words of the first essay titled, “What I Believe as an American Jew” are: “THE FIRST FACT that we Jews in the United States must never forget is that we are American citizens.”<sup>134</sup> On this he was unequivocal. It is a point which underpinned his entire philosophy of what it is to be a Jew in America, with its “resulting problems and obligations.”<sup>135</sup> On the issue of what Pekelis described as American pluralism, again, Cohen was quite explicit: “The fortunate fact that America is culturally as well as politically federalistic rather than nationalistic,” he stated, “gives every group a chance to contribute its inherited traditions to the common stock of American and humane civilization.”<sup>136</sup> Pekelis sought security in group identity. Cohen was a champion of assimilation. In the divergent and overlapping views of Morris Cohen and Alexander Pekelis can be seen the dilemma of dual or competing identities in post-war America. Jewish American or American Jew? That dual identity was applicable

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<sup>132</sup> Ibid.

<sup>133</sup> Leonora Davidson Cohen Rosenfeld, “Who Was Morris Raphael Cohen?” *The City College Alumnus*, Vol. 76, No.2 (December 1980): 8-9. [https://cohenlibrary.ccny.cuny.edu/mr\\_cohen.html](https://cohenlibrary.ccny.cuny.edu/mr_cohen.html). (accessed January 2017).

<sup>134</sup> Morris Raphael Cohen, *Reflections of a Wandering Jew* (Glencoe, Illinois: The Free Press, 1950), 3-5.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

to African Americans as well. And as Blacks and Jews entered on a course to secure the rights due them as American citizens together, they turned to the Constitution and to the courts, the institutions of civil society.

As architect of the Congress's plan for social action, Pekelis acted as a Jew and as an American, a dual identity which dictated the terms of engagement in pursuing equality within a democratic pluralistic America. Ultimately it was in liberalism that Cohen and Pekelis converged. In section "C" of Pekelis's "Program for Jewish Action" he stated that the CLSA "must be instrumental in establishing an active, and stable alliance between liberal America and its oppressed minorities, on the one hand, and the American Jews, represented by [American Jewish] Congress on the other."<sup>137</sup> Or as Cohen put it: "We dare not abandon the cause of liberalism. For if that fails in this country, we as a minority group, and ultimately all respect for human rights, are doomed."<sup>138</sup>

"How will the Second World War contribute to the evolution of the American political and legal structure?," queried Pekelis.<sup>139</sup> Specifically he speculated on whether and how far the protections afforded by the due process and equal protection clauses of the Fourteenth Amendment would extend beyond government and so provide a legal bulwark against the institutions that use "the pretext" of the private."<sup>140</sup> Both would be put on trial as the agencies' lawyers, in cooperation with other rights groups, turned to the law to reverse institutional racism. Pekelis's formula for the law as a driver of social change in cooperation with other minority groups, was the template for the use of the amicus brief. The "resort to litigation, heretofore avoided by Jewish organizations," had arrived.<sup>141</sup>

### **The *Amici Curiae***

Coalitions built on mutual interest were central to the *amicus* brief as a strategy with which to fight discrimination. Central to this strategy was that what was enshrined in law would lead to changes in society and influence patterns of behavior whether in housing or in the classroom. The CLSA, in putting forward a program to address discrimination, posited

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<sup>137</sup> Alexander, H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 242.

<sup>138</sup> Morris Raphael Cohen, "'Jews in America': What I Believe as an American Jew," in *Reflections of a Wandering Jew* (Glencoe, Illinois: The Free Press, 1950), 4.

<sup>139</sup> Alexander H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 227-228.

<sup>140</sup> *Ibid.*, 229.

<sup>141</sup> Naomi W. Cohen, *Jews in Christian America: The Pursuit of Religious Equality* (New York: Oxford University Press, 1992), 125.

that “by establishing new norms of conduct as expressed in law, [such a program] would have a long range effect on public attitudes and prejudice.”<sup>142</sup> Having embarked on a course to reverse discrimination in law, and with access to a cadre of constitutional litigators, the agencies sought redress in the courts in order to effect social change.

Before examining some of the cases which best illustrate Black-Jewish collaboration or cooperation and the use of the *amicus* brief, it is necessary to define what it actually represents in law and how it works as a tool with which to persuade the courts in its considerations. The *amicus curiae*, Latin for “friend of the court,” works such that, “Frequently, a person or group who is not a party to a lawsuit, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court’s decision.”<sup>143</sup> Krislov, in tracing the evolution of the *amicus*, described “the shift from neutrality to advocacy,” arguing that between 1949 and 1957, “An increased reliance on litigation as a means of vindicating minority rights otherwise difficult to obtain through the political process, ... resulted in civil rights organizations such as the ACLU, and the American Jewish Congress, being among the most active filers of *amicus curiae* briefs.” This is significant because, as Clement Vose posited, “...the real gold of politics in the judicial process....” lies in “...litigation conducted by action organizations and points to the importance of group agitation for judicial review...”.<sup>144</sup>

In the *amici* can be seen the convergence of law and group action and the underlying importance of consensus and cooperation in seeking remedy through the courts in matters of discrimination in housing, education and public accommodation.<sup>145</sup> It also demonstrates a resurgence in reliance on a court-based remedy. This recourse to litigation reflected a more rights-orientated attitude on the part of the justices and the growing confidence of religious, ethnic and racial minorities, as they sought to assert their rights, relying on the Constitution to afford them the equal protection of the law. For Jews and other minorities, despite their marginalized status, civic nationalism wasn’t some idealistic liberal myth, but rather an achievable goal that could be realized by pursuing justice

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<sup>142</sup> *The Work of CLSA: A Bibliography of Representative Publications of the Commission on Law and Social Action* (New York: American Jewish Congress, 1957), v.

<sup>143</sup> Legal Information Institute, [http://www.law.cornell.edu/wex/amicus\\_curiae](http://www.law.cornell.edu/wex/amicus_curiae). (accessed 21-11-16).

<sup>144</sup> Clement E. Vose, “Interest Groups, Judicial Review, and Local Government,” *The Western Political Quarterly*, Vol. 19, No.1 (March 1966): 85. <http://www.jstor.org/stable/445473>. (accessed 9 November 2016).

<sup>145</sup> Specific briefs listed in the following: American Jewish Committee Legal Briefs, Listings of Briefs in Boxes 1-4, 1949-1962. Briefs Filed by the American Jewish Congress, 1945-1955. I-77 Box 151 Folder 4.

through existing institutions. It was believed, although not always realized, that by establishing legal precedent, patterns of social behavior would change, leading to a more tolerant society in which all citizens would flourish.

For the agencies, Jewish group survival was ensured through a confirmation of their identity as Americans by working on behalf of those even more marginalized than themselves. And in doing so they helped to shape and improve an American democracy that was strong and flexible enough to withstand the demands made upon it to recognize and respect the rights of all its citizens. The growing resort to the law as a tool with which to effect social change is well documented in memoranda and conference notes of the ADL, AJC and AJCongress. Three years after the American Jewish Congress established the CLSA, the American Jewish Committee was considering its own “social action” program in terms of “fighting anti-Semitism by litigation and legislation.”<sup>146</sup> The significance of a 1948 memorandum is its consideration of future litigation when seeking remedy through the courts on a whole range of issues which might or might not directly affect Jewish interests. Consideration of expanded involvement was based on the proposition that “an invasion of the civil rights of one group threatens the security of all minority groups.”<sup>147</sup> The AJC did expand its activities, but in a more circumspect manner and partly in response to the AJCongress’s more aggressive program, especially as it concerned litigation.

The use of the *amicus* brief in specific areas by the Jewish agencies, reflects how they perceived their own identity and interests as a group and how that perception intersected with the interests of other minorities. Redich, in his 1949 paper, “Group Action in the Fight for Civil Liberties,” sought to measure the effectiveness of the ACLU, NAACP and the CLSA, and asserted: “In a field in which public pressure to restrict the activities of an unpopular minority can often become intense, it has been especially effective for an organization to enter the fight not as a minority group trying to defend itself but rather as a non-partisan organization interested in the ideals of free expression and thought.”<sup>148</sup> This is the “stalking horse” argument as referenced earlier, in which Jews

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<sup>146</sup> American Jewish Committee Archives, Civil Rights file, AJC Subject Files Collection, Memoranda on AJC’s civil rights activities for 1948. An Examination of the Action Program of the Legal and Civil Affairs Committee, January 20, 1948, 1.

<sup>147</sup> *Ibid.*, 10.

<sup>148</sup> Norman Redich, “Private Attorneys. General: Group Action in the Fight for Civil Liberties,” *Yale Law Journal* Vol. 58, No. 4 (March 1949): 576. <http://www.jstor.org/stable/793083>. (accessed 21 June 2018).

identified with or used the African American cause in furtherance of their own aims.<sup>149</sup> However, Redich suggests that by 1949 the importance of the ACLU's defense of minority rights was in decline and that, "most minority groups have learned that they can most effectively pursue their interests through organizations of their own."<sup>150</sup> What they also learned was that they could most effectively pursue their interests in cooperation with other minority organizations. "The main force of CLSA's work," Redich stated, "has been directed, of course, at problems of particular concern to Jews. But the Commission realizes, perhaps more than any other organization, that a legal principle established by one minority group will often accrue to the benefit of the others. It has therefore undertaken affirmative action beyond its own interest group, notably in fighting racial discrimination [...] some of its best legal work has been done in support of the more direct campaigns of other organizations."<sup>151</sup> This recognition resulted in exceptional levels of cooperation, significantly with the NAACP and set the legal and social agenda for the Jewish agencies in post-war America.

### **Litigation and the Courts**

The resort to litigation, and the use of the *amicus* brief as a tool with which to reverse discrimination in law as promoted by Pekelis, was evidenced in a run of court cases in the 1940s and 1950s.<sup>152</sup> All of the cases, two of which will be examined in greater detail, coincided with what Mark Tushnet has described as "the rights revolution."<sup>153</sup> Among the factors that contributed to this revolution was the Supreme Court's growing support for individual rights which resulted in various civil liberties organizations strengthening their litigation programs, among them the Jewish agencies. As Samuel Walker observed,

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<sup>149</sup> Hasia R. Diner, *In the Almost Promised Land: American Jews and Blacks, 1915-1935* (Baltimore: Johns Hopkins University Press, 1977), 237.

<sup>150</sup> *Ibid.*, 579.

<sup>151</sup> *Ibid.*, 590.

<sup>152</sup> Representative among them were: *Sweatt v. Painter*, 339 U.S. 629 (1950) involving the denial to Blacks of admission to an all white law school on grounds of existing facilities, *Dorsey v. Stuyvesant Town*, 190 (N.Y. Misc. 1947) involving discrimination in a New York publicly assisted housing project, *Henderson v. U.S.*, 339 U.S. 816 (1950) involving rules and practices segregating railway dining car seating allotment, and *Shelley v. Kraemer*, 334 U.S. 1 (1948), a restrictive covenant case involving racial discrimination in housing and *Westminster School v. Mendez*, 161 F. 2d 774 (1947) No. 11, 310, a school discrimination case involving Mexican American children, both of which are examined in greater detail.

<sup>153</sup> Mark Tushnet, "The Rights Revolution in the Twentieth Century," in *The Cambridge History of Law In America: Volume III The Twentieth Century And After (1920- )*, edited by Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 377-402.

“Constitutional litigation became a new force in American politics.”<sup>154</sup> The Court’s receptiveness “stimulated the growth of a public interest bar” and a requirement for constitutional litigators which intersected with a growing Jewish involvement in a race-based civil rights movement.<sup>155</sup>

A growing awareness of and sensitivity to race based rights on the part of government and the Court in the post-war period had a major impact on efforts to reverse discrimination in law. The effects were felt specifically in education and in housing, the latter an area in which the government had previously been complicit and the courts had been disinclined to interfere.<sup>156</sup> In fact, Michael J. Klarman argued that, “By the 1930s, the Federal Housing Agency explicitly promoted restrictive covenants, and the U.S. Housing Authority selected public housing projects with an eye toward preserving segregated housing patterns.”<sup>157</sup> But the cases in which the Jewish agencies, along with other civil rights organizations appeared as *amici*, were argued before the Court in the post-war and Cold War eras and so more likely to be looked upon favorably. It was, according to Klarman, a time in which, “Actions undertaken by the national government show that the social and political context of race had shifted dramatically by the late 1940s.”<sup>158</sup> As Samuel Walker noted, the ACLU’s, “General Counsel Morris Ernst, [a Jewish lawyer] was an influential member of Truman’s Civil Rights Committee - whose call for an end to all forms of discrimination based on “race, color, creed or national origin” helped establish a national consensus on racial equality.”<sup>159</sup> With acute housing shortages in urban areas, and much of what was available covered by restrictive covenants, Blacks were disproportionately disadvantaged.<sup>160</sup> With the convergence of an administration sensitive to civil rights, a growing race awareness on the part of the public and a more rights orientated court, the time was ripe for legal challenges to restrictive covenants.

“The first organized action undertaken against an institution must be a good test case, clear on its facts, strong on its law, and appealing to public opinion,” wrote Pekelis.

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<sup>154</sup> Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 111.

<sup>155</sup> Ibid.

<sup>156</sup> Michael J. Klarman, “Race and Rights,” in *The Cambridge History of Law in America: Volume III The Twentieth Century And After (1920- )* eds. Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 409.

<sup>157</sup> Restrictive covenants were private agreements entered into by white property owners not to sell to African Americans and other minorities, including Jews. Ibid., 409-410.

<sup>158</sup> Ibid., 413.

<sup>159</sup> Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 238.

<sup>160</sup> Ibid., 415.



*Shelley v. Kraemer*, which challenged the constitutionality of state enforcement of restrictive covenants, was such a case. Specifically, Pekelis pointed to discrimination against Blacks in housing and transportation as of “great indirect importance” for the movement.<sup>161</sup> “In the first place,” he wrote, “restrictive covenants are very promising fields for the successful testing of some of the theories aimed at the control of “private” arbitrary discrimination. Second, the alleviation of the Negro’s housing misery and the abolition of segregation and other badges of slavery would be one of the greatest contributions to the cause of adjustment and harmony which in itself would strike at one of the causes of Negro anti-Semitism. It would be particularly fortunate if the results could be achieved through the doctrinal, legal, or political help of a Jewish organization.”<sup>162</sup> There is much within that directive that addresses both the injustices suffered by the African American as well as the mutual interest driving Jewish involvement. Jews were also subjected to restrictive covenants and remembered the yellow Stars of David that marked them out to the Nazis and collaborating authorities. They were also aware of the anti-Semitism that was, in part, fueled by the bad practices of some Jewish landlords in Harlem. But they were also aware that the benefits derived from a favorable outcome in the covenant cases, in this instance for African Americans, would also accrue to the benefit of Jews.

The NAACP took the lead in *Shelley*. But significantly, *amicus* briefs were filed by more than fifteen organizations. Of these, five were Jewish agencies, including AJCongress, the AJC, the ADL, the Jewish War Veterans of the United States of America and the Jewish Labor Committee. But even more revealing is the approximately thirty-nine per cent of Jewish lawyers representing the *amici*, including those briefs filed by non-Jewish organizations.<sup>163</sup> Just as a disproportionate number of Jewish lawyers were involved in New Deal agencies and the representation of labor in the 1930s, once again in the post-war years, Jewish lawyers were disproportionately represented in the legal struggle against racial and ethnic discrimination in housing. This was due in part to a new assertiveness on the part of Jews. It was also representative of a more pluralistic American democracy, one in which those citizens marginalized by their ethnicity, race or religion,

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<sup>161</sup> Alexander H. Pekelis, “Full Equality in a Free Society: A Program for Jewish Action,” in *Law and Social Action*, edited by Milton R. Konvitz (New York: De Capo Press, 1970), 235.

<sup>162</sup> *Ibid.*

<sup>163</sup> *J. D. Shelley et al. v. Louis Kraemer and Fern E. Kraemer*, 72 U.S. 72 (1947), Consolidated Brief in Behalf of American Jewish Committee, B’nai B’rith (Anti-Defamation League), Jewish War Veterans of the United States of America, Jewish Labor Committee as Amici Curiae.

were using the system that had contrived or acquiesced in excluding or circumscribing their access to equal opportunity, to break down the barriers erected against them. While elites within the various groups were leading the charge, they were giving voice to a rising grass roots chorus reflecting a political and societal realignment, which resulted in institutional and legal reform realized through the courts.

The consolidated *amicus* brief submitted on behalf of the Jewish organizations in *Shelley* reflected the ideology which had become the motivating force for the agencies' programs of social and legal action. Here can be seen both mutual self-interest and the construction of an American identity rooted in the Constitution as the guarantor of democracy, as well as the Jewish tradition of seeking justice, not only for oneself. That was what it meant to be an American Jew, an identity circumscribed by group ethnicity, but with the rights and responsibilities inherent in a pluralistic democracy. As the brief made clear: "Although Negroes have suffered most from the widespread use of restrictive covenants, many other groups including Mexicans, Spanish Americans, Orientals, Armenians, Hindus, Syrians, Turks, Jews and Catholics have found such covenants barring them from many residential areas in many cities."<sup>164</sup> Further it referred to the sociological dimensions of racial discrimination in reference to the covenants: "Implicit in such a covenant is the anti-democratic and false racist doctrine that undesirable social traits are an attribute not of the individual but of a racial or religious group....They ascribe social objectionability to unborn generations."<sup>165</sup> The filing goes on to describe the societal impact of restrictive covenants on urban neighborhoods, which it states, spawn "Death, disease and crime."<sup>166</sup> And significantly the brief positioned its argument squarely in the Cold War period, seeking to use the international court of public opinion as leverage with the Court, when it asserted that, "The refusal of judicial support for racial restrictive covenants will remove a powerful propaganda weapon from the hands of democracy's opponents."<sup>167</sup> *Shelley*, in all its dimensions satisfied Pekelis's criteria for a sound test case. It recognized the political implications as leverage within the Cold War context. And significantly it took into consideration the sociological impact of exclusion as was argued

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<sup>164</sup> Ibid., 4.

<sup>165</sup> Ibid., 3.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid., 4-5.

in *Westminster School v. Mendez*, a perhaps less well-known case, but particularly relevant on several levels.<sup>168</sup>

*Westminster School v. Mendez*, involving Mexican Americans and segregation in public elementary schools in California, preceded *Brown v. Board of Education* by seven years. And while it did not have the same reach or impact, it was no less important. Its significance lay in that it established in law arguments that would be used again when the Court ruled in *Brown* that segregation of the nation's public schools was unconstitutional. To be sure, given the quota systems operating against Jews at universities, and the importance of education within Jewish culture, these cases were of particular interest to the agencies. But the arguments made in these cases go beyond narrow interests and were significant to Pekelis's contention that judicial review must take into consideration economic and social outcomes. It also points to the relevance of coalitions in bringing about change through the courts and in the community. The brief's arguments were predicated on an assumption that the physical facilities being offered to the appellees, in this case Mexican American school children, were equal to those afforded the English speaking group. Most significant among them was the following:

"Point 1: Whenever a group, considered as "inferior " by the prevailing standards of a community, is segregated by official action from the socially dominant group, the very fact of official segregation, whether or not "equal" physical facilities are being furnished to both groups, is a humiliating and discriminatory denial of quality to the group considered "inferior" and a violation of the Constitution of the United States..."<sup>169</sup>

The argument in *Westminster School v. Mendez*, wasn't simply that official classification by race, ethnicity or religion on the part of the state was unconstitutional. Taken into consideration were the social implications -- the badge of inferiority and resulting humiliation that would arise from such differentiation. This reflected the influence of Pekelis. He appeared as Special Advisor on the brief, which was submitted by Will Maslow, head of the CLSA and Pauli Murray, a Black, female lawyer and civil rights activist, both as counsel for the American Jewish Congress. Here can be seen Jewish and Black coordination as well as cooperation with an emphasis on those constitutional rights

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<sup>168</sup> *Westminster School Dist. of Orange County et al. v. Mendez et al.*, No. 11310 United States Circuit Court of Appeals, Ninth Circuit, 161 F.2d 774 (1947) U.S. App. Lexis 2835.

<sup>169</sup> *Westminster School Dist. of Orange County et al. v. Mendez et al.*, No. 11310 United States Circuit Court of Appeals, Ninth Circuit, 161 F.2d 774 (1947) U.S. App. Lexis 2835. Brief for The American Jewish Congress as Amicus Curiae. Will Maslow, Pauli Murray, 3-4.

being denied, not to their own respective groups, but to another marginalized group. Significantly the brief stated, “Nor do we struggle for minorities alone...In arguing here in favor of the rights of one ethnic group we are certain to serve the interests of all Americans.”<sup>170</sup> Here emerges the recurring theme of what it means to be an American in a democratic pluralistic society. A society cannot be democratic and a people cannot be free, unless the conditions of equality are met for all its citizens. That was the underlying principle of all three Jewish agencies as was demonstrated by the cases and causes they chose to represent, not just for themselves but for all Americans denied those rights as guaranteed by the Constitution.

### **Beyond *Brown***

Given its iconic status in the legal and social history of the civil rights movement, there is much that can be and has been written about *Brown*. A productive way of looking at its significance within the context of this dissertation is to consider it only insofar as it relates to the Southern states’ legal campaign to shut down the operations of the NAACP and the unprecedented and disproportionate legal effort undertaken by the AJCongress, in concert with others, in defense of the organization.

The Southern states’ reaction to *Brown* came, in part, as an attempt to put the NAACP and LDF out of business using a variety of means including “criminal prosecutions, suits for injunction, and disbarment proceedings against lawyers, ...”<sup>171</sup> *NAACP v. Alabama* represented the legal response to that attack. It is worthy of examination on several levels, first in terms of the varied organizations who lent support to the NAACP in its legal challenge to the state’s attempts to frustrate its efforts to operate there. Of the 21 lawyers listed in the motion and *amicus briefs*, 13 were Jewish and of the 14 organizations, 6 were Jewish.<sup>172</sup> This was a collective effort. Particularly revealing are the letters and memoranda of Shad Polier, a Southern Jewish lawyer who cut his teeth on the Scottsboro Boys case, was a student of Felix Frankfurter, and served on both the boards of the American Jewish Congress and LDF. These documents provide an invaluable insight into the depth of cooperation and coordination that existed between the two organizations, especially in terms of the legal expertise, PR offensive and fund raising

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<sup>170</sup> Ibid., 2.

<sup>171</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: BasicBooks, 1994), 218 & 554.

<sup>172</sup> *NAACP v. Alabama ex rel. Patterson*, U.S. 91 (1957) Motion and Brief of Amici Curiae.

efforts undertaken by the AJCongress. The case also serves to underscore the growing involvement of the Jewish agencies and more significantly their legal departments and their lawyers in a race-based rights movement that was gaining momentum. The various parties who filed as *amici*, despite their obvious dissimilarities, demonstrated a similarity of purpose in pursuing Constitutional rights that would extend to them all.

Just as the filings on the covenant cases showed strong ties between the NAACP and the three Jewish agencies, that same level of cooperation was demonstrated in *NAACP v. Alabama*. Several letters and a memorandum from Shad Polier in relation to how the CLSA brief might be used following its rejection by the Alabama court underscore a high degree of legal interest and intervention in the case. On 19 November 1957, Polier informed Maslow and Leo Pfeffer (also of the AJCongress) that, “In the course of the meeting of the Executive Committee of the NAACP Legal and Educational Fund, yesterday, Thurgood spoke in most complementary terms of the brief which we sought to file in the Supreme Court in the Alabama case... he was also impressed by the extensive press coverage of the fact that we had been joined by so many important organizations.”<sup>173</sup> Significantly Polier also suggested that the NAACP reply brief include arguments expressed in the *amicus* but not previously put forward by the NAACP. Clearly here can be seen a significant level of cooperation in terms of litigation and the Congress’s success in building consensus and coordination with other groups.

The long drawn out Southern legal assault on the NAACP finally ended in 1964 when, as Jack Greenberg states, “it became clear that the South’s drive to crush the Association had failed.”<sup>174</sup> It failed, in part, because of the support of a wide coalition of rights organizations including the Japanese American Citizens League, the Workers Defense League, the Council for Christian Social Action of the United Church of Christ and several others including the Jewish agencies.<sup>175</sup> Just as Pekelis asserted that a principle in law established by one group could benefit another, so too could the denial of a right to one group be applied to another. While not necessarily directly affected, these groups recognized that the assault on one organization was in effect an attack on them all insofar as it threatened their constitutional right of association and ultimately the foundations of a

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<sup>173</sup> Memorandum from Shad Polier to Leo Pfeffer, cc: Will Masow, November 19, 1957; Shad Polier Papers; P-572; Box 4; Folder 6, American Jewish Historical Society, New York, NY, and Boston, MA.

<sup>174</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 221.

<sup>175</sup> *National Association for the Advancement of Colored People v. State of Alabama*, No. 91, (1957) *Motion and Brief of Amici Curiae*.

democratic pluralistic America. But American democracy, its institutions and even the Constitution were to be put to the test again. Frustrated in part by the lack of tangible progress post-*Brown*, activists took their case, not to the courts, but directly to the streets, precipitating a new and different kind of challenge for their legal advocates and to the Jim Crow South.

The civil rights movement's campaign of direct nonviolent action posed a new challenge for lawyers used to taking the initiative. They would now have to follow a radical agenda set by a new generation of activists. These lawyers, many of them Jewish, who had represented the rights of workers in the 1930s as labor lawyers, and who had fought discrimination in housing and education as constitutional litigators in the 1940s and 1950s, would now work to support a new strategy of civil rights protest. Working with other civil liberties organizations, lawyers from the main Jewish agencies, aided by law students, many of whom were Jews, went South in support of the struggle of African Americans, "the wrongs against whom," Alexander Pekelis wrote, not long before his death in 1946, "are still the main black spot on the American record of constitutional liberties."<sup>176</sup>

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<sup>176</sup> Alexander H. Pekelis, "Full Equality in a Free Society: A Program for Jewish Action," in *Law and Social Action*, edited by Milton R. Konvitz, (New York: De Capo Press, 1970), 236.

### CHAPTER THREE: The Age of Direct Action

The 1960s witnessed a major shift in civil rights strategy as the movement broadened and intensified its campaign of direct action to which Jewish lawyers were again to make a key contribution. There were concerns on the part of some within the Jewish community about those new tactics – reflecting the concerns of cautious older and middle-class African Americans. However, this period witnessed even greater levels of cooperation and strengthened existing alliances forged between Jewish and Black rights organizations.<sup>177</sup> Despite the shift from elite-led, court-based remedy to group activism, Jewish lawyers once again turned to the Constitution and used the law to effect social outcomes. This time, however, they were following an agenda dictated by the practitioners of direct action. Crucially, the veteran generation of civil rights lawyers who had acted first as labor lawyers and then as constitutional litigators, were joined by a new generation of young Jewish lawyers in the 1960s. Together, they became movement lawyers.

The shift in the 1960s from litigation and the courts to direct action, and the violence with which it was met, forced race-based rights onto the national agenda and into the national conscience. Blacks were demanding equality and staking a claim to their identity as American citizens before a nationwide audience through television. It was a period which saw a confluence of racial and civic nationalism and one in which the lawyers, operating within the civic nationalist tradition “used it to advance the causes of both social democracy and racial equality,” resulting in sweeping changes.<sup>178</sup> The rhetoric of those leading and those operating within the movement, as Gerstle asserts, was couched in the language of civic nationalism. In a 1955 speech echoing both Alexander Pikelis and Morris Raphael Cohen, Martin Luther King Junior, in speaking of the Montgomery bus boycott asserted, “We are here in a general sense because *first and foremost* we are *American citizens*, and we are determined to apply our citizenship to the fullness of its meaning.”<sup>179</sup> It was an assertion of ownership of an American identity by African Americans entitled to all the rights and protections inherent in citizenship.

Operating within this evolving political context, lawyers continued to use the law in order to assert the protections of the Constitution in innovative ways on behalf of African

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<sup>177</sup> American Jewish Committee Records, Manuscript Collection-780, Box #E7, Folder #6, Appendix “B”. Executive Board Meeting Statement on AJC and Negro Protest Activities, November 1-3, 1963.

<sup>178</sup> Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001), 12.

<sup>179</sup> *Ibid.*, 250 (emphasis added).

Americans, anti-war activists and the economically deprived. Activists and their advocates were, as one of the latter put it, “caught up in the moment and the movement.”<sup>180</sup> Both were necessary to the achievement of civil rights. Jonathan Kaufman has written that, “This was not a revolutionary movement. Blacks were demanding rights that the Supreme Court had granted them.”<sup>181</sup> But that perspective belies the magnitude of the change that transpired once those demands were met and how those changes were effected. While the civil rights movement was not seeking to overthrow the government, it was engaged in dismantling Jim Crow and transforming the institutions of government, including the courts and law enforcement that had supported it. While their tactics may have been at odds, lawyers and activists, operating in tandem, were able to reshape the legal and social landscapes of the South and in some cases, beyond. What was acted upon on the streets was enshrined in law, and once enforced, these laws helped to reverse institutionalized discrimination.

Recruited by the previous generation, young Jewish lawyers and law students, acting as individuals and within and across groups, dominated the legal arm of the civil rights movement of the 1960s. By this time, the status of Jews in America had altered significantly. These young recruits weren’t subject to the constraints that ethnicity imposed on the previous generation. Further, the Holocaust was not something experienced in their lifetime. And yet, their oral narratives attest to a continued commitment to the pursuit of justice for those denied their rights, a commitment rooted in liberal Jewish family culture, as well as an identification with the Holocaust and Jewish suffering. No longer outsiders, Jews who’d achieved rapid and significant economic and social advancement continued to identify with the plight of African Americans. The social and economic gap between the allies was widening, and yet cooperation between the leadership of both communities was deepening. It would fall to the lawyers of the agencies, working in concert with other rights organizations, to represent the movement and in doing so help to effect social change.

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<sup>180</sup> George Cooper, recorded Skype interview by Linda Albin, 6 May 2017, 2.

<sup>181</sup> Jonathan Kaufman, *Broken Alliance: The Turbulent Times Between Blacks and Jews in America* (New York: Simon and Schuster, 1995), 105.



## Agents of Change

“The Times They Are A-Changin’” observed Bob Dylan in 1963, adding this warning: “...he that gets hurt/Will be he who has stalled.”<sup>182</sup> The civil rights movement was taking off. The NAACP and LDF, which held the monopoly on civil rights litigation in the South, was in danger of being left behind, or significantly eclipsed by its own reluctance to represent the actions of the activists and by those lawyers who were willing to do so.<sup>183</sup> These lawyers and law students, many of them recruited by lawyers or representatives of the Jewish agencies and the National Lawyers Guild, were eager to step into the breach. When asked, they chose to represent those activists whose recourse to direct action had pitted them against a political, social and legal apparatus designed to curtail their aspirations and infringe their rights. LDF did in fact play a pivotal role and in his memoir, Jack Greenberg, LDF’s former Director-Counsel remarked, “Although none of us knew it at the time, *Brown* marked the end of that phase of the civil rights struggle where all our important victories were won in court. By 1960, six years after *Brown*,” he wrote, “the “spirit of revolt” — Margold’s phrase—was a nationwide phenomenon.”<sup>184</sup> But it was a spirit long delayed.

Despite its symbolic significance, which served to legitimate expectations of equality, *Brown* did little to change facts on the ground for African Americans in terms of education, status and employment. Some historians have argued that ultimately that failure led to a level of dissatisfaction culminating in the boycotts, sit-ins and demonstrations of the late 1950s and early 1960s.<sup>185</sup> Other scholars, significantly legal scholars, in their more recent dissection of this particular period, have singled out *Brown*, and more specifically its court-based remedies, as having served as an impediment to a broader civil rights agenda.<sup>186</sup> What is not in dispute is that African American college students were unimpressed by what the lawyers and their elders had achieved and were becoming increasingly impatient. “For the students,...,” writes Tomiko Brown-Nagin in her study of

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<sup>182</sup> Bob Dylan, “The Times They Are A-Changin’.” Oct 26, 1963. © 1963, 1964 by Warner Bros. Inc. <https://www.bobdylan.com/song/>. (accessed 21 June 2018).

<sup>183</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 343-347. Carl Rachlin interviewed by Thomas Hilbink, 13 October 1992.

<sup>184</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 267.

<sup>185</sup> Christopher W. Schmidt, “Divided by Law: The Sit-ins and the Role of the Courts in the Civil Rights Movement,” *Law and History Review*, Volume 33, No.1 (February 2015): 97 <https://doi.org/10.1017/S0738248014000509>. (accessed 21 June 2018).

<sup>186</sup> Risa Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Massachusetts: Harvard University Press, 2007).

the movement in Atlanta, “pragmatists committed to negotiation and litigation rather than direct action—moved too slowly and settled for too little—much less than the students’ goal of “Freedom Now.””<sup>187</sup> The “spirit of revolt” had finally arrived. But this time, the students and not the lawyers were leading the charge.

It was a test for the lawyers who were following in the wake of a resistance that shook the South and sent shock waves right across the nation. It was, as Greenberg asserts, “Out of the courts and into the streets.”<sup>188</sup> The streets however led back to the courts and it would fall to the lawyers to devise new strategies that would aid the movement in maintaining its momentum. “The lawyers’ role,” wrote Mark Tushnet, “changed as the civil rights movement turned increasingly to demonstrations and boycotts.”<sup>189</sup> “Where previously we had taken the initiative, carefully choosing the issues and arenas we considered propitious,” Greenberg recalled, “now we had to respond to situations the demonstrators had created.”<sup>190</sup> What started out as a small spontaneous action spread like wild fire. More than 30 sit-in prosecutions came before the Supreme Court between 1961 and 1965, most defended on the grounds of the First and Fourteenth Amendments. Most were won, but only on the “narrowest possible grounds.”<sup>191</sup> The student activists were setting a new agenda for civil rights that had less to do with constitutional law and precedent, and more to do with individual dignity. “With the advent of the sit-in movement,” stated Brown-Nagin, “students wrested exclusive control over the struggle for racial equality from civil rights lawyers.”<sup>192</sup>

But the relationship between the students and the lawyers was more nuanced and less clear cut than Brown-Nagin asserted. The tactics of the civil rights activists and the civil rights lawyers may have been at odds but their goals were not so dissimilar. As civil rights lawyer George Cooper observed, regarding the Legal Defense Fund’s role, “LDF is the Legal Defense Fund, it’s not the street defense fund, ... LDF without an underlying

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<sup>187</sup> Tomiko Brown - Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (New York: Oxford University Press, Inc., 2011), 134.

<sup>188</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 267.

<sup>189</sup> Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1994), 305.

<sup>190</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 269.

<sup>191</sup> Jack Greenberg, “The Supreme Court, Civil Rights and Civil Dissonance,” in *Judicial Process and Social Change: Constitutional Litigation Cases and Materials*, ed. Jack Greenberg (St. Paul, Minnesota: West Publishing Company, 1976), 146.

<sup>192</sup> Tomiko Brown - Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (New York: Oxford University Press, Inc., 2011), 135.

movement wouldn't have worked but the underlying movement grew strength from and was aided by the work in the courts."<sup>193</sup> Both were necessary. In "Divided by Law," an analysis of the sit-ins, Christopher W. Schmidt refers to what he described as the students' "skepticism, even antagonism, toward litigation as a pathway to racial justice."<sup>194</sup>

Given the unpredictability of the students' actions coupled with their reluctance to resort to litigation and the courts, Greenberg and LDF recognized, albeit after some internal debate, that if they were to continue to represent the movement they would have to adapt their legal strategies to meet the new agenda being dictated by the protesters. While "they [the lawyers] could not choose the time, place and setting," Greenberg stated, "lawyers could exercise some discretion as to which cases to appeal."<sup>195</sup> For Greenberg, the challenge was to find a basis in law that would keep the activists out of jail, thus allowing them the freedom to further their objectives.

"An affirmative ruling on the question," Greenberg wrote, would immunize peaceful sit-in demonstrators from conviction and legitimize the object of the protests."<sup>196</sup> The students and the lawyers each used the tools available to them. As Schmidt concedes, "...the two groups settled into a functional alliance. The students continued to protest, the lawyers continued to represent the arrested students, and both advanced the cause of racial equality as best they knew how."<sup>197</sup> That alliance would become critical to the events and outcome of Freedom Summer in 1964, when an army of lawyers and law students, many of them Jewish and from the North, headed South in support of the movement. The times were changing, and lawyers were adapting to and even embracing that change.

### **Representing the Movement: The Lawyers**

The shortfall in legal representation in the South was about to become even more acute, as the movement stepped up its campaign and resistance to it escalated. The Council of Federated Organizations (COFO), a Mississippi coalition of civil rights organizations including the Congress of Racial Equality (CORE), the Student Non-Violent Coordinating

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<sup>193</sup> George Cooper, recorded SKYPE interview by Linda Albin, 6 May 2017, 6.

<sup>194</sup> Christopher W. Schmidt, "Divided by Law: The Sit-ins and the Role of the Courts in the Civil Rights Movement," *Law and History Review*, Volume 33, No.1 (February 2015): 112.

<sup>195</sup> Jack Greenberg, "The Supreme Court, Civil Rights and Civil Dissonance," in *Judicial Process and Social Change: Constitutional Litigation Cases and Materials*, ed. Jack Greenberg (St. Paul, Minnesota: West Publishing Company, 1976), 147.

<sup>196</sup> Ibid.

<sup>197</sup> Christopher W. Schmidt, "Divided by Law: The Sit-ins and the Role of the Courts in the Civil Rights Movement," *Law and History Review*, Volume 33, No.1 (2015): 129.

Committee SNCC, and to a lesser extent the Southern Christian Leadership Conference (SCLC), and the National Association for the Advancement of Colored People (NAACP), was planning its summer voter registration drive.<sup>198</sup> Through an examination of the legal organizations, in some cases created specifically to facilitate the movement, and the recollections of those lawyers who volunteered their services, it is possible to see how the law was used, not as an instrument to safeguard the status quo, but rather as an effective instrument for change. Despite LDF's string of victories in the Supreme Court during the sit-ins, Samuel Walker, in his history of the ACLU, wrote, "Supreme Court decisions meant little in the backwoods of the Deep South, [however] and the entire state of Mississippi was in the grip of a reign of terror. ... With few lawyers available to handle the huge number of civil rights cases, there was a serious crisis in legal representation."<sup>199</sup>

Approximately 150 volunteer lawyers went South in support of civil rights activists beginning in 1964 and of those who were white, more than half were Jewish.<sup>200</sup> While those Jewish lawyers who volunteered did not necessarily become civil rights lawyers, their narratives attest to the fact that their liberal Jewish culture was a factor. The contribution of these lawyers, including George Cooper, Al Bronstein, Armand Derfner, Henry Aronson, Richard Sobol, Jeremiah Gutman, and many others, was representative of a larger continuing and evolving collective contribution to civil rights in America. As Michael Meltsner, Jack Greenberg's deputy at LDF stated in his memoir, *The Making of a Civil Rights Lawyer*, "There was something appealing to Jewish lawyers, however, in the logic behind my father's basic teaching that social and legal action to end mistreatment of any minority helped all minorities; at least it helped the Jews."<sup>201</sup> That appeal is reflected in the oral histories of those lawyers who went South in the 1960s, resulting in an intersection of personal and professional identity. "Why," Cooper asked, "are Jews heavily liberal in voting? Why do Jews vote democratic, and not only democratic, why are we liberals in the American sense?" And he answered his own questions: "...it all goes with the same sensibility of wanting to protect and help."<sup>202</sup> These were the ideals around

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<sup>198</sup> August Meier and Elliot Rudwick, *CORE: A Study in the Civil Rights Movement, 1942-1968* (New York: Oxford University Press, 1973), 259-281.

<sup>199</sup> Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 264.

<sup>200</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 348. Jonathan Kaufman, *Broken Alliance: The Turbulent Times Between Blacks and Jews in America* (NY: Simon and Schuster, 1995), 86.

<sup>201</sup> Michael Meltsner, *The Making of a Civil Rights Lawyer* (Charlottesville: University of Virginia Press, 2006), 100.

<sup>202</sup> George Cooper, recorded Skype interview by Linda Albin, 6 May 2017.

which Alexander Pekelis charted a course for legal and social action, not just for Jews but for all Americans. In part, because of the obstacles that had been put in their way, Jewish organizations and lawyers acted on behalf of those even more marginalized than themselves. By the 1960s, even when most of the obstacles in the way of Jews had been removed or overcome, the foundations for and a commitment to social action had been laid. If “every act of discrimination is to be seen as an imperfection of the democratic system, as a violation of the civil rights of Americans,” as a CLSA publication asserted, there was still much more to be overcome.<sup>203</sup> And so, when the call for lawyers came in the 1960s, as it had in the 1930s and 1950s, Jewish lawyers rushed to answer it, continuing in the tradition of pursuing justice.

Among those who heeded the call was Armand Derfner. An associate at Covington and Burling, a large, prestigious commercial firm in Washington D.C., Derfner recalled that civil rights was high on the agenda of the firm’s lawyers engaged in pro bono work.<sup>204</sup> But his “first encounter with race and racism,” as he put it, “came before he was born,” in Paris from which his parents fled the Nazis.<sup>205</sup> In his contribution to *Voices of Civil Rights Lawyers*, Derfner recalled that his parents, having witnessed and suffered oppression because of who they were, on coming to America, “never got over the belief that this land is better and that our job is to make it better still.”<sup>206</sup> Derfner, who admitted to having known only a few, if any African Americans, nevertheless developed a bias towards blacks and against the South, a prejudice he attributed to growing up in the U.S. and in his family. The Jew as victim, the legacy of the Holocaust, was imprinted on the Jewish psyche of successive generations, as was the belief that with the benefits of American democracy came the responsibility of securing freedom and equality for all Americans. For Michael Meltsner, by way of comparison, it was in part the culture of growing up in a politically aware, liberal Jewish family and the McCarthy era that helped inform his choice of cause lawyering, even if he did not credit it at the time. For Derfner, it was the shadow the Holocaust cast over his family, their identification with fellow travellers, in this case Blacks, and the momentum that was building as the movement took

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<sup>203</sup> *The Work of CLSA: A Bibliography of Representative Publications of the Commission on Law and Social Action* (New York: American Jewish Congress, 1957), 4. URL: <http://www.bjpa.org/Publications/details.cfm?PublicationID=17120>.

<sup>204</sup> Armand Derfner, “Growing up in the Shadow of the Holocaust,” in *Voices of Civil Rights Lawyers: Reflections From the Deep South, 1964-1980*, ed. Kent Spriggs (Gainesville: University Press of Florida, 2017), 39.

<sup>205</sup> *Ibid.*, 37.

<sup>206</sup> *Ibid.*, 38.

shape post *Brown*. Derfner, along with two other Covington & Burling associates went South for two weeks, under the auspices of the Lawyers' Constitutional Defense Committee or LCDC. It was also about this time that he first heard the term "movement lawyer:"<sup>207</sup> he was about to become one.

Another lawyer who went South around the same time as Derfner, was David Lipman. His narrative is illustrative of the cultural thread that connected these Jewish lawyers over a longer civil rights movement that encompassed more than just race based rights. He too grew up in a middle class liberal Jewish home. However, in his family, workers' rights rather than race was the issue. As Lipman recalled, "Management was the oppressor...the revered unions were the oppressed."<sup>208</sup> Race was something he would learn about later. His first exposure to "rights" involved both Blacks and whites when his mother handed out hot drinks to striking steel workers. As he put it, "this was not about race, this was about union workers and a decent wage."<sup>209</sup> These were the same issues that had engaged a previous generation of Jewish labor lawyers including Helstein, Cotton, Maslow and Sugar. For them, the labor movement of the 1930s was as exciting as the civil rights movement of the 1960s was for Lipman's generation. As Victor Rabinowitz wrote, "The trade union movement was, beginning in 1933, an important and dynamic element in the national political and economic scene, and progressives and radicals of all varieties were swept up in it, much as, twenty-five years later, the progressive community was caught up in the civil rights movement."<sup>210</sup>

Lipman's first encounter with what it might be like to be a civil rights lawyer came at the Democratic National Convention in Atlantic City, New Jersey in 1964 where he was a page. He watched two people in action. One was the Black activist Fannie Lou Hamer, the other Joseph Rauh Jr, a Jew and the Mississippi Freedom Democratic Party's legal counsel. It was, he said, "...the first time I had ever seen a lawyer being a lawyer."<sup>211</sup> For Lipman, an authentic lawyer represented a cause and not a corporation. He would become the former, taking up a post with the Greenwood office of the North Mississippi Rural Legal Services (NMRLS). Part of the "authenticity" or reality of what civil rights

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<sup>207</sup> Ibid., 40.

<sup>208</sup> David Lipman, "Race Consciousness," in *Voices of Civil Rights Lawyers: Reflections from the Deep South, 1964-1980*, ed. Kent Spriggs (Gainesville: University Press of Florida, 2017), 46.

<sup>209</sup> Ibid., 48.

<sup>210</sup> Victor Rabinowitz, *Unrepentant Leftist: A Lawyer's Memoir* (Chicago and Urbana: University of Illinois Press, 1996), 21.

<sup>211</sup> Ibid., 49.

lawyering in the South might entail came when he realized his host had placed a gun under the pillow of his wife. It was a far cry from the middle-class suburb in which he'd been raised. And yet, another of the first memories that stayed with him was the couch in his first client's house which he remembered, "looked exactly like the broken down couch my Jewish grandmother had, that all Jewish grandmothers who lived in the "Old Country" had." It was," he said, "the most beautiful couch I ever knew."<sup>212</sup> In the act of remembering, Lipman made a connection between the struggles of his authentic African American non-corporate clients and those of his grandmother's generation of Jews. Despite the changes in their circumstances, these lawyers had heeded an appeal for civil rights lawyers, just as had the previous generation and for the same reasons. Their Jewish culture had instilled within them a responsibility to pursue justice, and as lawyers they used the one tool available to them to effect social outcomes for those even more marginalized than themselves. They did so as individuals and in response to an appeal from several organizations.

### **Representing the Movement: The Organizations**

The anticipation of a coordinated violent campaign of harassment and arrests against the COFO organizers and volunteers underscored the acute shortage of lawyers on the ground and the need for an immediate legal presence.<sup>213</sup> It was the National Lawyers Guild (NLG) that first stepped into the breach. Founded as an alternative bar association in 1937, the NLG's membership, "was drawn primarily from those groups – especially Jews, Catholics and Negroes—who were disproportionately confined to the lower levels of professional life."<sup>214</sup> In fact, twenty-two per cent of the lawyers listed as participating in the NLG's 1964 Mississippi Project were Jews.<sup>215</sup> Many were considered radicals and others bore the legacy of having represented suspected communists or for having themselves been targeted by the FBI and HUAC. "By the 1960s the Guild's roster of Jewish activist lawyers included Arthur Kinoy, Victor Rabinowitz, William Kunstler, Morton Stavis, and Michael

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<sup>212</sup> Ibid., 52.

<sup>213</sup> Steve Babson, Dave Riddle, David Elsila, *The Color of Law: Ernie Goodman, Detroit, and the Struggle for Labor and Civil Rights* (Detroit: Wayne State University, 2010), 326.

<sup>214</sup> Jerold Auerbach, *Against the Grain: A Historian's Journey* (New Orleans: Quid Pro Books, 2012), 61.

<sup>215</sup> National Lawyers Guild Records, Tamiment Library and Robert F. Wagner Labor Archives, Box No 8. Folder-Resolutions/Reports re: Southern Lawyers, Mississippi Project, List of Guild Attorneys participating in The Mississippi Project–1964.

Stander.”<sup>216</sup> And it was, to a large extent, the perception of Guild lawyers as at best radicals and at worst communists, that triggered a legal turf war as plans for Freedom Summer progressed.

Mississippi became disputed legal territory, the remnants of Cold War red-baiting continuing to cast a long shadow over the NLG and its lawyers. Despite a decision by the U.S. Attorney General to withdraw his proposal to list the NLG as a subversive organization in 1958, “The Guild did not just snap back....” according to Jewish lawyer and former NLG president Ernie Goodman.<sup>217</sup> Its membership greatly depleted, the civil rights movement of the 1960s potentially provided a lifeline for the Guild. As Goodman recalled in an interview for the Detroit Urban League Oral History Project, “By God, the Guild has a chance to get back into the mainstream of struggle.”<sup>218</sup> The creation of the Committee for Legal Assistance to the South (CLAS), of which Goodman was co-chair, was the means by which the Guild hoped to reconstitute itself as a viable and respected association of lawyers. A resolution adopted in 1962 at the Guild’s Detroit convention, in response to the “massive resistance of the Southern States to the Fourteenth Amendment, ...the harassing criminal prosecution of Negroes and their white supporters,...and the thousands of [resulting] prosecutions,...” called for a special committee to create a list of lawyers as well as the creation of a fund to provide assistance to Southern lawyers.<sup>219</sup> CLAS was that committee. In 1964 it prepared a report on the organization’s Mississippi Summer Program at the instruction of Goodman and opened its office in Jackson, triggering a response which culminated in the founding of two rival legal organizations, including the Lawyers Committee for Civil Rights and the Lawyer’s Constitutional Defense Committee, Inc., or LCDC.

## **Turf Wars**

CORE had identified a real need for legal assistance in the South based on the few attorneys, both black and white, willing or capable of providing the type of legal assistance

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<sup>216</sup> Murray Friedman, *What Went Wrong?: The Creation & Collapse of the Black-Jewish Alliance* (New York: The Free Press, 1995), 181.

<sup>217</sup> Ernest Goodman, “The NLG, The FBI, and The Civil Rights Movement: 1964- -A Year of Decision,” 38 *Guild Practitioner* 1 (1981): 1. <https://heinonline.org/HOL/P?h=hein.journals/guild38&i=11>. (accessed July 2016).

<sup>218</sup> Ernest Goodman Papers, Walter P. Reuther Library, Wayne State University, Series VII, Box 94, Folder 2. Interview for *Guild Notes* that discuss his “politicization” and politics within the Guild, 10.

<sup>219</sup> National Lawyers Guild Records, Tamiment Library and Robert F. Wagner Labor Archives, Box No 8. Folder-Resolutions/Reports; Assistance to Southern Lawyers Resolution, adopted 1962.



that would become necessary. As Carl Rachlin, a Jewish lawyer and CORE's general counsel recalled in an interview, "I did not see how it would be possible to cover the legal activities which would be generated by the [CORE's summer voter registration drive] plans."<sup>220</sup> More significantly, Rachlin rejected an offer of assistance from the NAACP. CORE's planned action would launch a major challenge to the laws and practices that prevented Blacks from registering to vote in order to exercise their constitutional right of suffrage. "I didn't feel," Rachlin recalled, "it [NAACP] was capable at that moment in its history of dealing with people in motion. ... In CORE, people were in motion all the time."<sup>221</sup> Rachlin, who had first hand experience of having tried some of the first "Freedom Ride" cases in Mississippi, did not believe the NAACP had the requisite experience or the legal strategies and personnel to respond to the unpredictability and large-scale activities which CORE was about to undertake. Wary of the potential consequences of association with the Guild and having rejected the NAACP's offer, Rachlin decided he was going "to have to construct an organization that did not then exist."<sup>222</sup> That organization was the Lawyers Constitutional Defense Committee or LCDC.

While Rachlin was proactive in his approach to the necessity for a large-scale legal program capable of dealing with the anticipated massive arrests and intimidation CORE activists and young volunteers from the North would almost certainly face, Mel Wulf, another Jewish lawyer was not. "We were reactive," the former legal director of the American Civil Liberties Union (ACLU) from 1962 to 1977 recalled in an interview in 1992.<sup>223</sup> At one time a Guild member, but also a self-confessed "bourgeois civil libertarian," Wulf was unequivocal in admitting the decision to form a new organization was directly related to the NLG's announced project.<sup>224</sup> The Guild would not be allowed to undercut the ACLU and at the same time Wulf believed many Northern lawyers ,were likely to object to any association with the organization. Like Rachlin, he came to the conclusion that they had to find a middle way through the legally contested quagmire of civil rights representation in the South. Among those individuals and groups Rachlin and Wulf approached were Leo Pfeffer, General Counsel to the American Jewish Congress and leading legal authority on the separation of church and state and Edwin J. Lukas, National

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<sup>220</sup> Carl Rachlin interviewed by Thomas Hilbink, 13 October 1992, 1.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid., 2.

<sup>223</sup> Melvin L. Wulf interviewed by Thomas Hilbink, 1 September 1992, 1.

<sup>224</sup> Ibid.

Affairs Director of the American Jewish Committee and a long time proponent of Jewish involvement in civil rights. They also contacted Jack Greenberg, then Director-Counsel of the NAACP Legal Defense and Education Fund, the leading legal African American civil rights organization and the only one which actually had a lawyer in Mississippi. Despite his reservations, Wulf also remembers contacting William Kunstler and Arthur Kinoy, both Guild members, both considered radicals, both Jewish and both committed to civil rights.<sup>225</sup> Like Wulf and Rachlin, all of those named lawyers were Jews.

Significantly the Jewish agencies were to play a major role in terms of recruitment and organization. With highly developed legal departments, experienced constitutional litigators and a history of cooperation with various rights groups, the agencies, in concert with LDF, provided the legal apparatus that supported the activists. Leo Pfeffer was a pivotal figure in the formation of LCDC, even, as Rachlin recalled, drawing up the papers for the corporation in addition to obtaining tax-exempt status which would prove significant to LCDC's fund raising activities.<sup>226</sup> Pfeffer, who Rachlin remembered as a kind of "father figure" along with Edwin Lukas at the American Jewish Committee, would provide the access to experienced lawyers that LCDC would need to support CORE's program. "...We latched on to lots of good lawyers through the contacts that these organizations had through their Lawyers Committees," Rachlin said, "...and they played a major role, much more in that area than any of the rest of us."<sup>227</sup> Mel Wulf at the ACLU and Jack Greenberg, despite his reservations, also contributed greatly to recruitment. On an organizational level another Jew was Henry Schwarzschild, whose family, like Pekelis, had fled the Nazis. While not a lawyer, his contribution to LCDC was indispensable. Schwarzschild, who was himself jailed as a Freedom Rider in 1961, had signed on as executive secretary of LCDC, providing the organizational backbone necessary to the operation of such a diverse and fledgling group. With the invitation to "Spend Your Vacation in the South" issued, LCDC's recruitment drive went into high gear.<sup>228</sup> However they were not alone.

Another group whose contribution to the legal program was considerable was the Law Students Civil Rights Research Council or LSCRRC. Operating in support of and under the auspices of LCDC, it demonstrates a continued disproportionate contribution of

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<sup>225</sup> Ibid., 1-2.

<sup>226</sup> Carl Rachlin interviewed by Thomas Hilbink, 13 October 1992, 4.

<sup>227</sup> Ibid., 9.

<sup>228</sup> Ibid., 4.

Jews within the legal arena across the generations and significantly to constitutional litigation and activism.

A 1965 *Time* magazine article titled “Law Schools: Learning by Doing,” noted that the Council, “founded in 1963 after a handful of Northern law students gave up summer jobs to go south as volunteer clerks for civil rights lawyers....[had] an impressive record of devotion to constitutional law in action.”<sup>229</sup> Young volunteer lawyers and law students who responded, guided by a previous generation of lawyers grounded in constitutional law, brought a level of expertise that did not exist or at least was not practiced or applied to civil rights and constitutional issues in the Jim Crow South. LSCRRC’s contribution was, as described by one of its founders Philip Hirschkop in a recent interview, “massive.”<sup>230</sup> LSCRRC itself did not engage in litigation, however by supplying law clerks, paralegals and law students to conduct research and help to prepare briefs, the more experienced and overburdened lawyers were able to assume an otherwise impossibly large caseload.<sup>231</sup> It also provided a training ground for the next generation of potential civil rights lawyers. Hirschkop, who is himself Jewish, recalled in an interview that while attending a COFO meeting in Mississippi around the time of the murder of the three civil rights workers, “I looked around the room and of the ten carpetbagger lawyers, and these were the major white lawyers involved in civil rights, all but Ben Smith from New Orleans was Jewish. And it really got me thinking about it. And of course that was my experience in the formation of the Law Students Civil Rights Research Council, every major person in founding the council and backing the council, our major funding came from Jewish people.”<sup>232</sup> Significantly the work was undertaken for seasoned movement lawyers and civil rights organizations including Morris Lasker, William Kunstler, Carl Rachlin, Arthur Kinoy, Faith Seidenberg, Michael Meltsner, CORE, the Lawyers Committee, and LDF. These lawyers, including Tony Amsterdam, were all Jews, “some of the leading geniuses of the civil rights movement legal movement,” in the view of volunteer Armand Derfner, who commended them for “the skill and creativity they brought to the law.”<sup>233</sup>

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<sup>229</sup> No Known Author, “Law Schools: Learning by Doing,” *TIME Magazine*, 21 May 1965 Vol. 85 No. 21.

<sup>230</sup> Philip Hirschkop, recorded telephone interview with Linda Albin, 15 July 2017.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*, 5.

<sup>233</sup> Armand Derfner, “Growing up in the Shadow of the Holocaust,” in *Voices of Civil Rights Lawyers: Reflections from the Deep South, 1964-1980*, ed. Kent Spriggs (Gainesville: University Press of Florida, 2017), 39.

There were three, perhaps four at most, Black lawyers in Mississippi and the white Mississippi bar either had no interest in representing those activists seeking to disrupt or even dismantle a system and a way of life they themselves supported, or at best, were fearful of the consequences of representation.<sup>234</sup> Just as they had done previously, veteran Jewish lawyers responded to the need, joined by a younger generation of similarly motivated Jewish lawyers and law students. They would face challenges, in terms of the temperament and culture of the Southern state court system as well as to their own physical safety. New strategies were needed to both respond to the requirements of the movement and address a culture of obstruction that extended through the entire state apparatus from law enforcement to the courts. As Thomas M. Hilbink posited, “The formation of LCDC marked a shift in the legal needs of the civil rights movement away from controlled test cases to a flooding of the courts....a new conception of legal defense was necessary....”<sup>235</sup> Paul Crowell, writing in the *New York Times* in June 1964, described one of the briefing sessions held for the volunteer lawyers and law students under the LCDC’s auspices in which it was stressed to the lawyer volunteers that “you can’t win civil rights cases in the local and state courts in the South; your important job will be to help local counsel build a solid foundation for an eventual and successful appeal to the United States Supreme Court.”<sup>236</sup> The scale of the task was formidable. But these lawyers, of different generations, were to meet the many challenges ranged against them through a creative use of the law in support of the activists.

### **Southern Hospitality**

All of these lawyers would face intimidation, both verbal and physical in nature. And the abuse wasn’t limited to African Americans. Jewish lawyers were also targeted. In the South anti-Semitism was just another form of racism and from this negativism reinforced an empathy of identification from an earlier era. Former LDF Director-Counsel Jack Greenberg provided anecdotal recollections of what some out-of-state lawyers faced when

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<sup>234</sup> Henry Schwarzschild interviewed by Thomas Hilbink, 31 August 1992 & 3 September 1992, 15. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 264. Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 348.

<sup>235</sup> Thomas M. Hilbink, “Filling the Void: The Lawyers Constitutional Defense Committee and the 1964 Freedom Summer” (undergraduate thesis, Columbia University, 1993). ii. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2416592](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2416592). (accessed 21 June 2018).

<sup>236</sup> Paul Crowell, “Lawyers Briefed on Rights Mission,” *New York Times*, 8 June 1964. [http://www.nytimes.com/1964/06/08/lawyers-briefed-on-rights-mission.html?\\_r=0](http://www.nytimes.com/1964/06/08/lawyers-briefed-on-rights-mission.html?_r=0) (accessed 21 June 2018).

appearing before Mississippi federal court Judge William Harold Cox. “In a voting case he called blacks “chimpanzees,” ...and he wouldn’t accept papers from Mel Leventhal, who was Jewish, unless “A.D.” (Anno Domini, Latin for “in the year of the Lord”) followed the date....”<sup>237</sup> This, according to Greenberg, wasn’t required by Cox of anyone else. Further he recalled that when it came to commercial rather than civil rights matters, Cox waived the rules on affiliation, saying they were only for “Jews and niggers from New York.”<sup>238</sup> While Mel Leventhal suffered the indignity of being singled out as a Jew, Henry Aronson, another Jewish volunteer lawyer suffered more than that at the hands of Dallas County Sheriff Jim Clark. Aronson, who had only a fleeting interest in civil rights, although he’d studied constitutional law, was contacted by a former classmate, another Jewish lawyer, Al Levine. Both went South under the auspices of LCDC in support of an LDF team.<sup>239</sup> Aronson was immediately dispatched to Birmingham, Alabama and from there to Selma where LDF used him as a kind of “Trojan Horse” with which to serve papers on Clark. The Sheriff responded by throwing the young lawyer down the stairs and then threatened him in federal court.<sup>240</sup> The experience, while painful, did not serve to dampen Aronson’s enthusiasm. “I was profoundly moved and affected,” he said in an interview, adding, “It was very clear to me that there was an enormous need down there, and the contribution that someone, even with modest abilities such as me - no background - could make.”<sup>241</sup> Aronson did make a contribution. Even before Clark had exacted his revenge, Aronson had come up with a legal strategy that would save time, money and manpower. Rather than filing case-by-case bail applications for a group of young activists who’d been arrested, the lawyers could file an omnibus petition or class action that would establish a standard that could be applied to them all.<sup>242</sup> Aronson stayed in the South for the next three years. He and the other young volunteers would be challenged to devise new strategies as the authorities placed legal obstacles in their way, and in the path of those activists they came to represent.

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<sup>237</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 348.

<sup>238</sup> Ibid.

<sup>239</sup> Henry Aronson, interviewed by Thomas Hilbink, 9 November 1992.

<sup>240</sup> Henry Aronson, “Getting Punched by Sheriff Clark and Other Misadventures,” in *Voices of Civil Rights Lawyers: Reflections from the Deep South, 1964-1980*, ed. Kent Spriggs (Gainesville: University Press of Florida, 2017), 197-198.

<sup>241</sup> Henry Aronson, interviewed by Thomas Hilbink, 9 November 1992, 9.

<sup>242</sup> Ibid., 8-10.

Another of the obstacles confronting the lawyers who went South from the North was the need to affiliate with local counsel. It was to have potentially serious consequences for LCDC's ability to provide adequate legal representation to its client base, which was African American, and for Richard Sobol, one of its lawyers. But it raises another important point in terms of what is meant by civil rights, and specifically here, a civil rights case. Sobol, who associated with the New Orleans African American firm of Collins, Douglas and Elie did sometimes appear alone in court although he and other out-of-state attorneys were given letters of introduction confirming their association with Louisiana counsel. That, however, did not prevent his arrest in February 1967. What is particularly significant about the suit filed by Sobol, and the U.S. government as Plaintiff-Intervenor, was the reliance on what constitutes a civil rights case, and by extension what a civil rights lawyer is.<sup>243</sup>

The argument put forward in defense of Sobol was almost entirely based on rights as they related to race and failed to make the wider argument in consideration of the protection of rights that ensure full participation for all individuals in civil society, without discrimination. The substance of the argument in defining and then relying on what a civil rights case is, was that Sobol's arrest was considered "unconstitutional because its effect was to deny Negroes and civil rights workers adequate and equal access to the courts, legal representation, and legal advocacy."<sup>244</sup> Specifically the post-trial brief argued, "what is significant is that the prosecution or defense of the case, on whatever legal grounds, supports Negroes in their efforts to achieve equality and social advancement; that the lawsuits "protect and vindicate [their]...equal rights, again, in the racial context...The cases that we handle," it stated, "are in the category of those that are going to rock the boat in terms of the question of racial equality."<sup>245</sup> Significantly, the brief addressed civil rights only as they relate to race.

### **Civil Rights Lawyering**

The definition of a civil rights case as applied to Sobol was of course specific to the outcome sought, and so may have been purposefully narrow in its construct. However, there are inherent dangers in terms of legal precedent in attaching such a limited

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<sup>243</sup> *Sobol v. Perez*, No. 67-243 (E.D. La., July 22, 1968), Plaintiffs' Post-Trial Brief.

<sup>244</sup> *Ibid.*, 67.

<sup>245</sup> *Ibid.*, 70-71.

interpretation of what does or does not constitute a civil rights case. If, by civil rights, it is generally held to be free to participate fully in civil society, free from unequal treatment because of ethnicity, religion or gender in areas of housing, education and employment, then it has been demonstrated that lawyers, among them Jewish lawyers, were furthering and defending civil rights long before race-based civil rights became part of the American conscience and so entered the historical lexicon in such a way as to obscure its wider meaning and application. George Cooper, a Jewish lawyer who worked with Sobol, in defining a civil rights lawyer suggested taking off the label and discussing substance instead. In an interview Cooper said, “I was interested in litigating cases which would expand the rights of individuals to opportunities, untrammelled, unaffected, unrestricted by irrelevancies in their status.”<sup>246</sup> Cooper, together with Sobol, who was also Jewish, wrote the brief for *Griggs v. Duke Power Co.*,<sup>247</sup> challenging the use of testing and seniority systems in employment, a case whose impact Jack Greenberg put “almost on a par with the campaign that won *Brown*.”<sup>248</sup>

*Griggs* was argued before the Supreme Court in 1970 by Greenberg, and came in the wake of the enactment of the 1964 Equal Opportunities Act, aimed at ending discrimination in employment. David Garrow quoted employment scholar Alfred Blumrosen as having declared “that few decisions in our time – perhaps only *Brown v. Board of Education*—have had such momentous social consequences” as *Griggs*.<sup>249</sup> Garrow also underscores the significance of Title VII within the Civil Rights Act, quoting from an assessment offered by an attorney in the Department of Justice at the time which stated, “discrimination in employment is the most widespread and undoubtedly the most harmful to its victims and to the nations as a whole of the multiple evils that the overall Act banned.”<sup>250</sup> Some twenty years earlier Alexander Pekelis had identified action against discrimination in employment as an “historic responsibility,” citing the Ives-Quinn Act in New York, the purpose of which was, “the elimination and prevention of discrimination in employment, and the opportunity for employment without discrimination is declared to be

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<sup>246</sup> George Cooper, recorded SKYPE interview with Linda Albin, 6 May 2017, 10.

<sup>247</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 425 (1971).

<sup>248</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 412.

<sup>249</sup> David J. Garrow, “Toward a Definitive History of *Griggs v. Duke Power Co.*,” Review of *The Crusade For Equality In The Workplace: The Griggs V. Duke Power Story*, by Robert Belton, ed. Stephen L. Wasby (Lawrence: University Press of Kansas, 2014), in *Vanderbilt Law Review*, Vol. 67 (2014), 199. <https://www.vanderbiltlawreview.org/2014/01/toward-a-definitive-history-of-griggs-v-duke-power-co/>. (accessed May 2017).

<sup>250</sup> *Ibid.*, 201.

a civil right.”<sup>251</sup> Pekelis was prescient in anticipating that the principle of Ives-Quinn, to “which fifty two per cent of all American Jews were[are] subject,” would be extended throughout the country.<sup>252</sup> It was to take another two decades. But significantly *Griggs*, which successfully challenged discriminatory practices in employment, was written by two Jewish lawyers and argued by a third.

Cooper’s experience as a civil rights lawyer and his own analysis of *Griggs* demonstrates the overlay or imprint of a Jewish, albeit secular identity on an American identity, within the political sphere, and significantly where personal and professional identity overlap. It also addresses when and where to draw the line between activism and lawyering. “I don’t think you can be a Jew,” Cooper stated in an interview, “and this is the reason why so many Jewish lawyers are involved in this, [civil rights] and why the title, Jewish lawyers in civil rights is a little bit redundant is because I have a sense, of course, that we had been a persecuted people and we are a minority and the rights of minorities were something that was instinctively part of my feeling.”<sup>253</sup> “The movement,” Cooper maintained, “spoke to him [me]” and so he took a short leave from Covington and Burlingame and went South to work in LCDR’s Jackson, Mississippi office in the summer of 1965.<sup>254</sup> And while he was very much carried away by the movement and the times, both of which he embraced, Cooper never crossed the line between that of attorney and activist. “Lawyer. I went down as a lawyer,” he stated unequivocally, adding, “Goodman, Cheney and Schwerner (a reference to the three civil rights workers murdered in 1964) went down as activists. I went down as a lawyer.”<sup>255</sup> Cooper’s legal skills were applied to *Griggs*, the high point of his legal career, in his own estimation. Although weakened by later Supreme Court rulings, *Griggs* remains a basic legal principle. It also demonstrates the way in which lawyers effect social change when a statute is enforced. In 1966 when he was living in New York Cooper recalled, “there wasn’t a single Black bank teller in any of the major banks in Manhattan and now you’re hard pressed to find a white bank teller....” That, he said, was the real effect of *Griggs*. Making it happen is the crucial role of an attorney.<sup>256</sup>

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<sup>251</sup> Terry Lichtash, “Ives-Quinn Act—The Law Against Discrimination,” *St. John’s Law Review*, Vol. 19, Issue 2 (April 1945): 171. <http://scholarship.law.stjohns.edu/lawreview/vol19/iss2/18>. (accessed 21 June 2018).

<sup>252</sup> Alexander H. Pekelis, “Full Equality in a Free Society: A Program for Jewish Action,” in *Law and Social Action*, ed. Milton R. Konvitz (New York: De Capo Press, 1970), 233.

<sup>253</sup> George Cooper, recorded SKYPE interview with Linda Albin, 6 May 2017, 2.

<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*, 13.

<sup>256</sup> *Ibid.*, 15.



While activists were the driving force of the civil rights movement, lawyers, among them Jewish lawyers, were crucial to creating the legal strategies that helped to support it. In recalling the part played by lawyers in the summer of 1964, Henry Aronson, another volunteer who went South with the Lawyers Constitutional Defense Committee (LCDC), assigned himself and others only a minor role: “I doubt that many of us understood the historic magnitude of Freedom Summer—the “Summer of 1964.” As lawyers we were on the periphery, a small number of itinerant bit players supporting a cast of thousands of stars—mostly local residents and civil rights workers.”<sup>257</sup> But that is to diminish their significant contribution to the struggle for civil rights in America and in the case of Jewish lawyers, their disproportionate role in securing economic and workers’ rights in the 1930s, working through the Jewish agencies across the next two decades to effect social change in housing, public accommodation and education, and in applying themselves to race-based rights in the 1960s. These same lawyers, joined by a younger generation of Jewish lawyers and law students, acting as individuals and within and across groups, were at the forefront of the civil rights movement. Not all Jewish lawyers who went South were civil rights lawyers nor did they necessarily pursue cause lawyering after their southern exposure. Some went for a couple of weeks, others for a few years. Some of these young lawyers joined new government social welfare agencies, while others dedicated themselves wholly to civil rights law. Still others returned to lucrative private practice, combining it with pro bono work.<sup>258</sup>

Regardless of how long they stayed in the South, or whether their commitment to civil rights law continued, the stories of those Jewish lawyers and student volunteers who did go in aid of the movement, attest to a commitment to social justice rooted in a common Jewish culture. Together, as agents of social change and in concert with a cast of activists, including organizers, lawmakers and clergy, they helped to reshape the legal and social landscape of America, and so made history. These lawyers demonstrated that the law could be used as a tool with which to effect not just legal outcomes, but as a driver for social change as well. In applying Pekelis’s model of law and social action, Jewish lawyers were able, over the course of a longer civil rights movement, to demonstrate the elasticity of

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<sup>257</sup> Henry Aronson, “Getting Punched by Sheriff Clark and Other Misadventures: Alabama 1964, Mississippi, 1966,” in *Voices of Civil Rights Lawyers: Reflections from the Deep South, 1964-1980*, ed. Kent Spriggs (Gainesville: University Press of Florida, 2017), 196.

<sup>258</sup> Michael Meltsner, *The Making of a Civil Rights Lawyer* (Charlottesville: University of Virginia Press, 2006), 118.

America's imperfect democracy and its ability to withstand and accommodate those challenges to its failures of representation, by becoming a little less imperfect.

## CONCLUSION

“The law is the landing force [of change]. It makes the beachhead. But the breakthrough, if it is to be significant, is broadened by forces from behind which take advantage of the opening to go the rest of the way. Where these forces are present, significant alterations of social practices result. Where they do not exist, the law has been unable to hold its beachhead and the legal action becomes a kind of military monument on which is only recorded, we were here.”

John P. Frank, Lawyer and Legal Scholar

This study has demonstrated what was previously ignored or under acknowledged by historians, and that is the disproportionate collective contribution of Jewish lawyers to the pursuance of civil rights in America over a longer period than is suggested by the traditional narrative. In doing so it has further shown how this collective contribution changed the legal and social landscape of an increasingly pluralistic America. So dominant has the traditional narrative become, it has served to obscure a broader concept of ‘rights’ and the historical underpinnings of what was to become the struggle for race-based rights in the 1960s. Oral histories and personal narratives have illuminated a central thread which connects all of these lawyers when it comes to their motivation, regardless of the period in which they participated. That is not to say that most Jewish lawyers were civil rights lawyers, however a disproportionately large number of civil rights lawyers were Jewish. And those that were cite their Jewish culture as a source of motivation. Jack Greenberg, in his memoir, recalled that he was often asked whether being Jewish had anything to do with his chosen career path, and he answered, “Of course it did...”<sup>259</sup> Michael Meltsner, George Cooper, and Pamela Horowitz, and before that Maurice Sugar, Eugene Cotton and Ernie Goodman, all acknowledged that there was something in Jewish culture and within their liberal Jewish homes that in part influenced their choice of the civil rights bar. And even those who may not have stated it, demonstrated it, through their association and work within the Jewish agencies and in cooperation with other rights organizations.

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<sup>259</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 50.

Situating the Jewish lawyer in three distinct periods, beginning in the 1930s through to the mid 1960s, represents a critical intervention into how the legal, political and social histories of a longer and continuing battle for civil rights in America intersect, reflecting the contingent nature of rights and how the contestation between competing ideas of racial nationalism or tribalism in civic society are mediated. An examination of the contribution of these lawyers beginning in the 1930s, reveals how the dominant narrative of civil rights in the 1960s, defined as race-based rights, obscures a broader understanding of citizens' rights over a much longer period. Relegated to chapters or footnotes or individual biographies, these lawyers acted over a longer period. Previously underacknowledged, they demonstrate a collective and evolving contribution to a longer civil rights movement and the construction of a more representative American democracy. Recovery of these lawyers as cohorts or as a group, informs our understanding of how they helped shape the ground upon which the modern civil rights movement played out and how the institutions and vested interests of a hierarchical White Protestant power structure responded to the increasing assertion of rights by minorities. Marginalized by their ethnicity, subject to quotas at institutions of higher learning, and excluded from Wall Street law firms, Jewish lawyers channeled their efforts towards those even more marginalized than themselves. Alexander Pekelis insisted that freedom and equality for Jews in a democratic pluralistic society could only be achieved through establishing an American identity, based on freedom for all citizens, regardless of race, religion or ethnicity. Jewish lawyers, growing up in a culture which valued education, justice and a sense of responsibility towards others, used the law as a tool in order to effect social change. In forging alliances based on self-interest and mutuality, most significantly, but not exclusively with African American groups, Jews, and significantly lawyers, could and would go on to establish their American credentials. In doing so, they helped to secure rights for those even more marginalized than themselves within the majority society that had sought to exclude them.

The narratives and oral histories of Jewish lawyers interviewed by this author and by others, as well as those discovered in various archives, has demonstrated an overlay of personal and professional identity. This intersection of personal values derived from Jewish culture when applied to neutral principals of law resulted in a collective contribution to the achievement and protection of rights for all Americans through the making and reshaping of the law. While these lawyers have not suggested that they consciously embarked on the path of civil rights law because of their Jewish culture or

heritage, in examining their own motivations, they have concluded that their cultural or ethnic heritage, along with familial influences, contributed to a civil rights agenda. Significantly, this common thread can be located in the testimonies of these lawyers beginning in the 1930s and continuing through the 1960s, underpinning the contention of a longer civil rights movement in which Jewish lawyers figure disproportionately. Despite Jews becoming less marginalized over time, Jewish lawyers continued to cite their ethnic, cultural and familial background as informing their pursuance of civil rights law.

Even as Jewish lawyers began to assert their American identity, and became less marginalized, when measured by economic and social status, they continued to identify with the plight of African Americans and acted on their behalf, as well as on behalf of the economically deprived, anti-war activists and other minorities and dissenters. The experience of George Cooper, who finished law school in 1961, serves to underscore that continuing commitment to minority interests despite a change in personal circumstances. After graduating, Cooper remembered, “I got offers from all kinds of law firms that would have never touched a Jew with a ten-foot pole maybe even a year or two earlier. So I came of age at a time when I personally didn’t suffer which made me all the more maybe sympathetic to those who were suffering, that is the Blacks.”<sup>260</sup> Cooper’s recognition and assessment of his own status and experience as an American Jew, measured against that of African Americans, speaks to issues of identity and professionalism, within a cultural and political context at least partially, although certainly not entirely, resolved in this project.

In referencing his own lack of suffering, Cooper is speaking not only of African Americans, but also about a previous generation of Jewish lawyers who grew up in what amounted to ghettos and suffered the indignities of quotas at higher institutions of learning, exclusion from the WASP law firms as addressed by Auerbach, and whose liberal left wing associations or ideologies left them vulnerable to the McCarthy era witch hunts, and so stigmatized as leftists at best, and communists at worst. It was a generation that Cooper came into contact with when he went South with LCDC. “That generation,” he said, “which comes out of the Depression and went through McCarthyism, because that generation was very left, the ones that were very aggressive were very left, and suffered under McCarthyism, and I think they loved the fact that there was a new generation now coming along that was willing to pick up the cause.”<sup>261</sup> That previous generation of

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<sup>260</sup> George Cooper, recorded Skype interview with Linda Albin, 06 May 2017, 9.

<sup>261</sup> Ibid.

lawyers to whom he refers, many of them Jews, who had suffered because of their ethnicity and because of their perceived political affiliations, had represented the worker, the politically disenfranchised, immigrants and other minorities. In picking up the torch, Cooper continued along a well-trodden path, but one that must be placed into an historical context. It is the African Americans' struggle and suffering with which Cooper now identifies and to which he feels a responsibility. That sense of shared suffering contributed to what Julian Bond identified as "a relationship of intersecting agendas based on...a common heritage of oppression," and "common ground as victims."<sup>262</sup> It was in part the foundation on which the so-called Black-Jewish alliance was built. It was also the culture from which emerged those Jewish lawyers who along with African Americans and activists of all races, made a collective contribution to the civil rights movement of the 1960s culminating in the 1964 Civil Rights Act and the 1965 Voting Rights Act.

### **Periods of Participation: The 1930s**

Significantly, beginning in the 1930s, the common culture that set these young aspiring lawyers apart and deposited them on the margins of the majority white Christian society, also served as the reservoir from which they derived a set of values and which they used to navigate through educational and legal hierarchies that sought either to exclude them or relegate them to inferior institutions of learning or employment. Their oral histories, which have served as a roadmap, track a commitment to social justice, rooted in Jewish culture and the Constitution. As they sought to establish their American credentials they acted on behalf of those even more marginalized than themselves, through government and through the unions. The New Deal provided the way in for Jewish lawyers who had found themselves on the outside, and the law was the tool with which they could, through government, influence social outcomes, especially in the areas of employment and social welfare. In detailing the appointment of Jews by American presidents, David G. Dalin states that "more than 15 per cent of Roosevelt's top-level appointees were Jews (254)", and that "Jewish attorneys were also appointed to influential positions in the department of Labor, the Security and Exchange Commission, the Tennessee Valley Authority, and

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<sup>262</sup> Julian Bond Papers, 1897-2006, A Collection in Special Collections the University of Virginia Library Accession Number 13347 Charlottesville, Virginia, USA. Series 1, 13347 Box 8, Folder 15: Speech- Blacks and Jews: Historical Relationship, Drexel University, Philadelphia, Pennsylvania, 1989 May 25, 1.

several other New Deal agencies.”<sup>263</sup> Just as lawyers were needed to support the civil rights activists in the 1960s, the New Deal needed lawyers and Jews were among those to answer the call. But these lawyers were appointed not because they were Jews, but rather on their merits, to represent the interests of all Americans. Working as individuals, through government, these Jewish lawyers were themselves instruments of social change, helping to institute reform in employment, agriculture and industry, through work programs, a minimum wage, collective bargaining, farm subsidies and financial protections. These lawyers had answered Roosevelt’s call to arms and would continue to use the law as a weapon in the battle to construct a more equitable and so more just society in which Constitutional guarantees would become a reality for all Americans, regardless of their race, religion or ethnicity.

### **The 1940s and 1950s**

As this study has demonstrated, before the war, Jewish lawyers identified as Jews but acted as individuals, establishing their American credentials through the opportunities afforded them by the New Deal and as they did so, became more secure as a minority within an America whose social hierarchies had sought to limit or exclude their participation. But the Holocaust contributed to a new sense of vulnerability. The main Jewish agencies, established in the years following the second wave of immigration from 1880 to 1920, largely as a defense against anti-Semitism, assumed a new significance in the post-war era. Jewish group identity became a bulwark against anti-Semitism as well as an assertion of an American identity that brought with it certain rights and responsibilities. Significantly, it was in 1909 that the NAACP was founded, three years after the establishment of the American Jewish Committee and nine years before the founding of the American Jewish Congress, suggesting that both African Americans and Jews saw the benefits of operating as a group and later, in cooperation with other minority and rights groups. So far as the Jewish organizations were concerned, Naomi Cohen asserted, “Seeking to erase social as well as legal discrimination, they aimed for a pluralist state in which all religious and ethnic minorities enjoyed basic rights, opportunity and public respect...”<sup>264</sup> Following

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<sup>263</sup> David G. Dalin, “At the Summit; Presidents, Presidential Appointments, and Jews,” in *Jews in American Politics*, ed. L. Sandy Maisel and Ira N. Forman (Lanham: Rowman & Littlefield Publishers, Inc., 2001), 35.

<sup>264</sup> Naomi W. Cohen, *Jews in Christian America: The Pursuit of Religious Equality* (New York: Oxford University Press, 1992), 27.

Pekelis's model in which Jews would not achieve equality so long as other minorities were denied their rights, the lawyers within the American Jewish Congress's Committee on Law and Social Action (CLSA) acted through the courts to reverse discrimination in law, not just for themselves but for other minority groups and in cooperation with them, using the *amicus* brief as a tool with which to influence a Supreme Court more amenable to individual rights.

An examination of the *amicus* briefs filed by all three Jewish agencies as presented in this paper demonstrates greater levels of cooperation and a strengthening of the informal alliance that existed between African American and Jewish organizations, especially in the recourse to litigation. Jewish lawyers, acting within the agencies, adopted a legal and social agenda, in conjunction with other groups, which put them at the forefront of constitutional litigation and so at the forefront of effecting social change in housing, education and employment. The victories in *Shelley v. Kraemer* and *Brown v. Board of Education*, it can and has been argued, did little to change the situation for African Americans, either in housing or the schools. In fact, an end to restrictive covenants, in some instances, actually contributed to ghettolization as more affluent Whites, including Jews, fled neighborhoods as Blacks moved in. *Brown*, initially, did little to change the racial and ethnic demographics of America's public schools and created a white backlash in the South. But victories have a symbolic as well as an absolute value. Pekelis's belief that reversing discrimination in law could change social patterns and so help to end discrimination remained, along with social action, the only recourse available to the continuing struggle for rights in a democratic pluralistic America. That model was to form the basis of the civil rights movement of the 1960s.

### **The 1960s**

What this project has demonstrated throughout is an evolving and creative use of the law in the pursuance of civil rights. Beginning in the 1930s through government social programs and in the 1940s and 1950s through litigation brought by various rights organizations, lawyers led the way in their use of the law to effect social change. This dissertation has argued that the role of lawyers was as pivotal to successes in the 1960s as it was previously, but the significant difference in this period was that the lawyers were following an agenda set by the 'movement'. That should not, however, in any way diminish the importance of the law as a tool and the part played by those who used it. Jack Greenberg



says in his memoir, “it was out of the courts and into the streets,” but what has been seen is that the streets led back to the courts.<sup>265</sup> What was acted out in the street was to be enshrined in law. Just as the New Deal needed lawyers so too did the movement. Carl Rachlin, CORE’s counsel understood that its voter registration drive and the actions of Freedom Summer would need the support of a small army of lawyers and when he put out the call, various rights’ groups, among them Jewish organizations, lawyers and law students joined forces in support of the movement and together they dismantled Jim Crow using the streets, the law and the courts.

In recalling Freedom Summer, Henry Aronson believed that at the time few of those lawyers involved recognized the historic importance of those events and upon reflection suggested that the lawyers were no more than “a small number of itinerant bit players.”<sup>266</sup> But this dissertation has demonstrated that they were much more than that. Lawyers, and disproportionately among them, Jewish lawyers, were significant supporting actors, exerting a force beyond their numbers not just in the civil rights movement of the 1960s, but also as part of a larger social movement for justice, beginning in the 1930s. These so-called “bit players” were Jack Greenberg’s crusaders. Whether acting as individuals through Roosevelt’s New Deal social welfare programs, within the Jewish agencies using litigation in conjunction with other rights’ groups, or through the courts, in support of the civil rights movement and other activists, they influenced how the law is taught, the legal profession, the law itself, and ultimately social history. This project, by situating Jewish lawyers in three periods, has created a multi-dimensional paradigm reflecting their evolving status within society and their sense of personal and professional identity, both as Jews and as Americans, resulting in a broader understanding of the struggle for civil rights, the construction of an American national community, and their place in it.

### **The Unwritten Chapter**

This study has a beginning and an end. It is circumscribed by the periods that have been examined and the conclusions that have been drawn based on the oral histories of various

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<sup>265</sup> Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994), 267.

<sup>266</sup> Kent Spriggs, editor, *Voices of Civil Rights Lawyers: Reflections From the Deep South, 1964-1980* (Gainesville: University Press of Florida, 2017), 196.

lawyers, archival evidence including legal briefs and memoranda, the work of social and legal historians and the historical context in which they've been situated. From their beginnings as immigrants and the sons of immigrants whose ethnicity defined and limited their opportunities, Jewish lawyers, on their merit, were at the forefront of constitutional litigation and through their collective and continuing and evolving efforts used the law as a tool for social change over a longer civil rights movement. These lawyers provided the access to the legal profession often denied to minorities and provided the support required by the civil rights movement when so many in the profession were either ill-equipped or unwilling to represent activists in their attempt to dismantle Jim Crow and create a new social order in the South.

Significantly, the evolution of the Jewish lawyer demonstrates the positive intersection of personal and professional identity, reflecting a responsibility to social justice. "Tzedek, tzedek, tirdoff. Justice, justice, you shall pursue." Their journey, from marginalized to fully-fledged Americans is at one with America's journey towards a more tolerant national community in which the rights of all its citizens are respected and protected. But this is a history that is still being written. What part or how big a role Jewish lawyers will play in the continuing struggle for civil rights in America is unclear. The recent assault on the Constitution and on the judiciary by the Executive underscores the urgent need for a renewed call to arms for those committed to protecting the Constitution, the rights enshrined in that document and the people whose interests it serves; these are the real lodestones of a democratic America, and an American community, committed to the ideals of civic nationalism and one in which the rights of all citizens are recognized, respected, and celebrated.

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## **Appendices: Interviews by the Author**

### **Appendix 1: Interview with George Cooper, Civil Rights Lawyer, Professor of Law and co-founder of the Employment Rights and Immigration Law Clinics at Columbia University, New York.**

May 2017

Recorded Skype Interview

LA: You said that you thought you may be able to shed some light on the attitudes and strategies of some of the young civil rights lawyers, certainly of the 60s and into the early 70s. I'm doing 1933 to 1965. You think that's a weird cut off?

GC: Yes, it's a weird cut off. It's right before the Civil Rights Act took effect and the thing that changed everything.

LA: It's through 1965.

GC: Yes, but the Civil Rights Act of 1964 didn't really go into effect until 1965 or 1966, I forget exactly what the date was.

LA: The Black-Jewish Alliance, as it was pointed out to me early on, has been done to death. Zillions of people have addressed that. The idea of a dissertation is you've got to do something a little bit different. So coming off people like Jacquelyn Dowd Hall, who talk about a longer civil rights movement, not just race-based rights but rights in America, citizens' rights. When I started investigating the idea specifically of Jewish lawyers and the relationship to civil rights, I realized that coming up through the New Deal, you see the first significant collective contribution through big government at the time, when big government was actually popular, and we're talking workers' rights, economic rights and you get into late 1940s, 1950s and you've got obviously *Brown*, desegregation and schools, or at least the court decision to desegregate the schools. And also a lot of action by lawyers working within Jewish agencies, the big three – American Jewish Congress, American Jewish Committee and the Anti-Defamation League.

GC: I don't question its ...

LA: It's 40,000 words, it's got to stop somewhere.

GC: Yes, it does but let me just tell you my history, although I'm going to be 80 next month. I graduated from law school in 1961. Mike Meltsner and I are linked in a lot of ways. I graduated in 1961 but unlike him, I didn't go right into working for the Legal Defense Fund. I travelled for a year. I was in the army for two years. I travelled for a

couple of years. I went into practice in Washington for a year or two and didn't like it and finally got a teaching job in 1966 and started teaching and I was interested in the civil rights movement. I was in Washington for the March on Washington because I was a lawyer in Washington at the time. I was really caught up in the moment and the movement, but I didn't really get involved until I was at Columbia and that would have been starting in 1966/67.

LA: What made you, what was your background? Was there something within your background? Was there something about your being a Jew, that in some way attracted you towards civil rights and using law and civil rights?

GC: Although I'm a Jew by heritage, I'm very much a non-practicing, secular, non-religious Jew. So nothing in Judaism as such, but I don't think you can be a Jew, and this is the reason why so many Jewish lawyers are involved in this, and why the title, Jewish Lawyers in Civil Rights is a little bit redundant is because I have a sense, of course, that we had been a persecuted people and we are a minority and the rights of minorities were something that was instinctively part of my feeling. I never particularly articulated it. It just seemed to me awful the treatment of Blacks in America, Jim Crow and all that. I grew up in Baltimore. I went to school and it was in segregated schools because I finished High School in 1954, the same year *Brown* was decided. So during my entire public school education in Baltimore, I was in a segregated school. That was just the way things were then. I didn't rebel against it, in particular. I just lived my life as an ordinary young person, not particularly politically aware. But as I grew up, as I grew older in college and then in the early 60s as the movement began to grow and gather, it spoke to me and I jumped at the chance. I wanted to be involved in it. Even while I was in practice, I was at a law firm called Covington and Burling, and they allowed you to do some pro bono work and in that context, I did some pro bono in civil rights cases from 1963 to 1966 while I was there; not much. It was the time and I embraced the time and the feeling of it. It just spoke to me.

LA: Most Jewish lawyers that I've talked to actually would share that sort of feeling. Most of the Jews I know are not practicing Jews in the sense of religion but there is something either within the tradition or something one can't even describe and, of course, the whole issue of post-Holocaust. Did you notice that you were working with a disproportionate number of Jews? When I look at the last names of all these articles I've been reading, there's a guy named Thomas Hilbink who wrote about LCDC and he did a whole bunch of interviews and said he can't see anything that tied these guys together, or anything they necessarily had in common, and yet more than 50% of those young

volunteer lawyers he interviewed were Jewish. If you look at the names within the National Lawyers' Guild, a disproportionate number of them...

GC: Let me just step back for a minute and just look at the voting patterns. Why are Jews heavily liberal in voting? Why do Jews vote democratic, and not only democratic, why are we liberals in the American sense? And it goes all goes with the same sensibility of wanting to protect and help. I guess it's Jewish tradition, when you think about it that way but I guess it is, and it's the same thing that make us vote democratic, the same thing that makes us liberal, makes us want to support liberal causes which this was the epitome of.

LA: Do you think part of it also had to do with establishing American credentials for an earlier generation? Were your parents American born or foreign born?

GC: My parents are American born. My grandparents were foreign born. It's a fairly prevalent pattern. My grandparents came over at the turn of the century and then my parents were born here. We're not very religious. My father was not only not religious, he was sort of anti-religious but my mother was a bit religious, mainly to satisfy her mother. But they didn't do anything and they didn't have any sense of any commitment to any social cause. I was not red diaper baby in any sense of that.

LA: But you did talk about attitudes and strategies of some of these young lawyers and you were one of them. What did you mean by that when you talk about attitude before we even get into strategies?

GC: If you let me jump to 1966/67, then I can have something to say about that. Here I am, a young lawyer, now a young law professor, excited about the movement and interested in civil rights and wanted to do what I could. Now that free of the drudge of being a corporate lawyer, I knew what I wanted to do and accomplish, and the Civil Rights Act was coming into effect and LDF was trying to figure out how to strategize about it. I wrote a lot about that in the article which I think you said you have.

LA: So did you actually work with LDF or were you independent of LDF but worked with them?

GC: I was independent of LDF. I was a law professor. I was as independent as a law professor can be, but I was a law professor at Columbia and the headquarters of LDF was at Columbia Circle so we were very close. I was also a consultant to LDF and worked with them a lot. I hate to put it this way but this was an intellectual problem. New York had had fair employment laws for years and they never accomplished anything because it was always one-on-one cases and so we solved it as one-on-one cases. Where this guy was

more or less qualified and this other guy was always so subjective, it was almost impossible to win any cases unless you had some overwhelming situation, a factual situation. We began to develop the notion of group impact, class action patterns of discrimination. Everybody agreed that this was the way we had to go. This was the thing that was going to make this law different than the long-standing and ineffectual laws like that of New York. And I was the guy who had the time and the inclination to try and create a solid intellectual base for this strategy; and that's what the seniority and testing article tries to do. I did the testing part, Richard did the seniority part of it. That's what we labored very hard at and I think that article and analysis which then found its way into *Griggs* against Duke Power, I did the briefs in *Griggs* against Duke Power.

LA: In David Garrow's review of Robert Belton's "Towards a Definitive History of *Griggs v. Duke Power*", he quotes Alfred Blumrosen as stating, 'Few decisions in our time, perhaps only *Brown vs. Board of Education*, have had such momentous social consequences.' That's quite extraordinary.

GC: That's very cool. I love *Griggs*. I consider *Griggs* and the stuff leading up to it, there were a lot of cases, *Griggs* was the one that finally got to the Supreme Court but Richard and I tried several cases outside of New Orleans and LDF had several other cases that worked their way up through the courts. I consider that the high point of my legal career, working on those cases and developing them and eventually having that strategy find its way into law, and it still is in the law. Although it's been much weakened by later Supreme Court decisions, it still is a basic principle and I'm very proud of that.

LA: Are you familiar with people like Risa Goluboff, Kenneth Mack? They're the so-called new legal historians. Most of them are, in fact, lawyers like yourself but functioning as academics and she really in her book... it's interesting, Jack's written a book, *Crusaders in the Courts, How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution*. Goluboff's book is the *Lost Promise of Civil Rights* and she really lays a lot of blame, she thinks *Brown* is way over-rated (he laughs, snorts) and LDF, and in particular Jack Greenberg, really have a lot to answer for because she thinks they set a certain type of legal strategy that, in fact, inhibited direct action and the strategy really was so focused that it ignored stuff like economic rights, workers' rights that had been so significant in the 30s and the 40s, and she hates *Brown*, she really hates *Brown* and then talks about how *Griggs* came. Finally, she says, LDF got around to and got back to economics. What do you think of that?

GC: So she likes *Griggs* and she doesn't like *Brown*?

LA: I haven't read her whole thing about *Griggs* but basically what she's saying is, she doesn't like the legal strategy that LDF and, in particular Jack Greenberg, used in terms of how the Fourteenth Amendment was used in terms of ignoring... she feels *Brown* subjugated all kinds of other civil rights, i.e. economics, poverty, workers' rights and basically says all this happened later on but it was way too late, they should have been doing this earlier on. And she also sees LDF as very lawyer led versus client led, way too much an elite legal apparatus determining...

GC: Well, that's what LDF was. I haven't read this woman's work and I don't want to comment on it without reading it, but LDF is the Legal Defense Fund, it's not the street defense fund and both are necessary. Yes, LDF without an underlying movement wouldn't have worked but the underlying movement grew strength from and was aided by the work in the courts. That's the way I've always seen it and I find it hard to imagine that that's not true. Part of the problem, if you want to talk about what's troubling, and what caused the election results last year which everybody is wringing their hands over, is the fact that there's this white group that has a sense that Blacks have gotten everything and they haven't gotten their fair share and, of course, I'm sure you know some of that analysis. One could say, if one wanted to be nasty about it, that something like *Griggs* which put Blacks up ahead of whites, ahead of senior whites, let's take the seniority system, the way that *Griggs* was applied began to challenge seniority systems. Things like that have had a negative effect on overall American politics which reached fruition last fall. Anybody can find ways to criticize any of this. You fight the fight you have. You fight the war with the army you have. You fight the fight that you can fight at the time. You have the strategies, you have certain troops and you use them. I don't know what else this woman would have done. I don't know what her recommendations are, it would be interesting to see.

LA: When I talk to people like Pam Horowitz and others, yourself, it's like she said, it was never just about litigation. It was always these things working together and I also discussed with Mike, I said can you imagine if a whole bunch of lefty liberal lawyers launched a full-frontal assault on the public, which then you've got a certain tone, and the courts and said, hey, we want to deal with seniority, testing, economic rights, desegregation of the schools, accommodation. From what I can see, you can only... it's lawyers working in conjunction with the courts and I noted that you actually didn't think it was a great idea to take *Griggs* to the Supreme Court initially, despite having written the brief.

GC: I never said that. Who said I said that?

LA: It's in this *Vanderbilt Law Review*.

GC: Bob Belton's article?

LA: It's not Belton, it's a review of Belton. It's Garrow reviewing Belton. That was some very nuanced writing in that article.

GC: We rushed that in and I got the *Harvard Law Review* to publish. We went to *Harvard Law Review* and really lobbied them to say, you've got to publish this article and you've got to publish it now because cases are coming out and unless you publish it now, it's not going to be in time and they really got the editors of the *Harvard Law Review* on our side.

LA: I'm just noting the writing which is very good and a little bit difficult for someone like me to get my head round at times, but it was really interesting to see how nuanced some of the argument was. I won't say tricky but you know what I'm saying.

GC: I like nuanced.

LA: ... the courts have been enlightened and perceptive in giving it a broad and flexible interpretation, that's where your nuanced comes in, in my opinion.

GC: Now we're talking about Supreme Court judicial interpretive.

LA: I'm getting overly whatever about legal stuff now because I'm finding it really interesting but let's get back to...

GC: Spend a moment on that because everything judicial is interpretation and the notion of a strict construction, there's no such thing as strict construction. When you take a word like discrimination and how do you strictly construe that? It doesn't make any... if you had to interpret this law and you can interpret it various ways, and I'm sure you can interpret it to have the least impact or the most impact, that's where your underlying sensibilities take you and, of course, I was trying to argue for taking it as broadly as possible.

LA: How important do you think *Griggs* was? I told you that Belton and Garrow and others say it is seminal, it's as seminal as *Brown* and if we forget Goluboff and we accept *Brown* as being a seminal case, what do you think about *Griggs*? Why do you think it was successful when it was successful, because certainly the times, to some extent, must dictate where the court is willing to go and how far it's willing to go?

GC: And just like the court was willing to go where it went, the Warren court was willing to go where it went with *Brown* because it was post-war, the army had been integrated. The horror of Jim Crow had reached the consciousness of enough people so that the court was ready to go that step. And when we talk about *Griggs*, the court was also sympathetic to the movement and even though it had many Republicans, not liberals, the

Burger court was sensitive to the movement of the time. The CRM was the movement of the 60s and that washed over a lot of Republican sensibilities that might have opposed it. So it's an interpretation that goes with the time and we provide the intellectual basis for it because you always have to have some justification for it and we gave them the justification they needed. They wanted to go there and we gave them the justification they needed. What would have happened if *Griggs* had been decided otherwise, if there had been... which meets impact analysis. If you took the Civil Rights Act of 1964 back to the same enforcement pattern that had stifled the prior New York, California, Illinois Civil Rights Act from having any effect, then you would have had the same thing. It wouldn't have had any effect. Now, what would that mean in the long run? So you couldn't have used it to integrate paper mills, power plant workforces and so on, except by chewing away individual cases. I think that the Black job progress would have been much impeded. Black economic progress and the development of a Black middle class, which is so much larger now than it was back in the 60s, would have been much impeded. Would it have progressed? Yes, it would have progressed. I think it would have progressed much slower.

LA: I was reading *Sobol v. Perez* about out-of-state lawyers, Louisiana when Richard was... that whole thing.

GC: Richard is a real hero. I never felt that I was a victim in any way of discrimination. Where I grew up in Baltimore, it was an all-Jewish neighborhood. If you weren't Jewish, you were kind of funny. Being Jewish got me out of school on more days because we had more holidays and I felt sorry for the gentiles that had to go to school when I could be out of school playing. Even when I finished law school, I finished law school in 1961 right at a time when law firms that had previously been all white were beginning to break down the barriers and I got offers from all kinds of law firms that would have never touched a Jew with a ten-foot pole maybe even a year or two earlier. So I came of age at a time when I personally didn't suffer, which made me all the more maybe sympathetic to those who were suffering, that is the Blacks.

LA: So you must have crossed paths with one generation of lawyers who came of age in the 30s into the 50s and then suddenly there's guys like you and Richard Sobol and Mike and all the rest, was there a relationship between those generations of lawyers and if so, how did that work? How did you negotiate that kind of relationship, the older guys and the younger guys, especially those volunteer lawyers who were kids really going south for a very limited amount of time, directed by these older guys?



GC: Well, the older guys like Al Bronstein was a great guy. That older generation you're not going to find around anymore.

LA: But I have interviews that this Hilbink did with all of them before they died.

GC: I think they loved us. That generation went through a lot and that generation, which comes out of the Depression and went through McCarthyism, because that generation was very left, the ones that were very aggressive were very left, and suffered under McCarthyism, and I think they loved the fact that there was a new generation now coming along that was willing to pick up the cause. So I don't think there was any difficulty but I don't recall working closely with any of them. I knew them slightly. I knew people like Kunstler but we had a different attitude, maybe because we were getting sympathy from the Establishment. We could get Warren Burger to listen to us and the Warren Burger of the 30s was not listening to the left movement back then, so I guess we had a much easier time of it.

LA: This gets to the issue of the role of the lawyer. What is a civil rights lawyer?

GC: I'm going to give a stupid answer. A civil rights lawyer is a lawyer who works on civil rights cases. I don't know what more to say. You decide on what you're going to work on. You can work on civil rights cases.

LA: What's a civil rights case then?

GC: I worked on particular kinds of cases which were called civil rights cases. So let's take the label off and talk about the substance. I was interested in litigating cases which would expand the rights of individuals to opportunities, untrammelled, unaffected, unrestricted by irrelevancies of their status. How's that for intellectual jumbo? In other words, cases that helped people like Blacks get their fair share.

LA: Did that by extension make you a civil rights lawyer?

GC: I guess so. If that's the kind of cause you want to pursue, then you're a civil rights lawyer, yes, so I'm backing into the definition.

LA: So we've got a lawyer, you admit yourself it was the moment. You were led by the moment.

GC: I was, yes.

LA: There was a level of romanticism about it.

GC: Yes.

LA: It's exciting. You're going to do good things or you think you're going to do good things.

GC: You believe in what you're doing and you have a chance to do it. What more can you ask for life?

LA: Absolutely but when I asked you if you were a civil rights lawyer, it's interesting how many people have told me that Jack Greenberg was a very sort of cold, dispassionate guy, it's interesting in reading his book. He struck me as someone who clearly is a civil rights lawyer. He dedicated his life to...

GC: He did, yes.

LA: So let's set that aside, but he seemed to be someone who drew a line. He used the courtroom, he used the law as his tool. He and Thurgood Marshall, to a certain extent, are a little late to the game in deciding to come down and represent the sit-ins. I think the chapter title is interesting where he says, out of the courts and into the streets. I would argue it was out of the courts and into the streets and back into the courts.

GC: And back out onto the streets.

LA: And back out into the streets. Things don't always happen sequentially and I just think of all these lawyers, the younger people, the students who were coming seemed to be more activist in nature and I know that Columbia... were you part of that at all, the classes that were given, I think Tony Amsterdam may have been part of that.

GC: You mean after the 1968 sit-ins?

LA: No, earlier. This is early on in the early 60s from when LCDC goes down, the lawyers...

GC: I was part of LCDC. I went South with LCDC.

LA: Tell me about that. I want to know all about LCDC.

GC: In 1965, when I was still a lawyer in Washington, I went South with LCDC for several weeks in the summer of 1965.

LA: So tell me about LCDC then.

GC: LCDC was an offshoot of the... related to the ACLU and it's when they were doing the voter registration and so on, you know this history.

LA: Yes, but I want to hear it from you.

GC: There were all these people going South and some of them, unfortunately, getting killed. They wanted some lawyers and, of course, as I said, even when I was at Covington, I was still very much interested. This movement spoke to me and I wanted to participate in it all I could, and it's one of the reasons why I wanted to get out of practice and into teaching where I could do more of it but anyhow, I was still in practice and they let you do pro bono things. So I took part of my leave time, summer vacation time, and went South

with LCDC to the office in Jackson. So they had an office in Jackson, I think Al Bronstein was head of it and he tried to find stuff for lawyers to do and I went out to this place and tried to get somebody out of jail and so on. But it was only a couple of weeks and it was very exciting and people said aren't you afraid? And I never was. I always felt that I had this lawyer cloak of invincibility about me. Also in 1979 I went to South Africa for almost a year. Maybe this is an aside but may inform what you're doing. The anti-apartheid people in South Africa, a whole element of the British led bar, the Brits against the Dutch elements of South African society. The English bar, of course, knew about the LDF and thought that there was a chance that something in South Africa might be done to try and push the envelope of apartheid a little bit in the courts, and they created something called the Legal Action Center, Legal Resources Center and it was sponsored by the leaders of the bar. So it had a degree of protection from the government because these were very established people and they formed this up in 1979 and they came to the States. They were tightly connected to the LDF and they came to the States looking for an American advisor to help them and I went over to do that for a year, helped them get that set up. It's the same kind of thing. That also was very exciting for them and that was in 1979, so it took them more than a decade, but we did push on a couple of little things. I forget where...

LA: I was asking you about LCDC.

GC: LCDC just whet my appetite for getting involved in this.

LA: One of the interesting things, I guess it was Mel Wulf, the ACLU who was instrumental.

GC: Yes.

LA: You had Lukas, I think, from the American Jewish Committee. Are you aware of that whole thing between...

GC: I'm not completely aware of it but, of course, the thing is the Lawyers' Guild had a 'red taint' to it and Jack Greenberg was politically aware and I think he felt, and I think with some reason, that he had to keep his movement free of this 'red taint' and the Lawyers' Guild would color the edges of it, would pink in the edges of his effort. I think that was his feeling and I think it's terrible but not unreasonable.

LA: It's interesting because Mike, as much as he revered Jack and had huge respect for him, thinks that he might have got it wrong on that one because we did talk about it. It comes up a lot in this thing. It was almost like turf warfare over who was going to get the South. Even Mel Wulf, the ACLU's reaction, from what I can see by the interview he did, is in part they did not want the NLG stealing their thunder and the NLG, people like Ernie

Goodman out of Detroit, were sitting there and seeing it suddenly as this resurgence because they suffered so bad under McCarthy.

GC: There's two ways to look at it. One is the turf war and the other is a purity war, which is the spin I just put on it a moment ago.

LA: Yes, you did, which also would affect admittedly funding. I think Jack Greenberg was able to attract quite a bit of money to LDF which I think he was afraid would dry up if, in any way, LDF ended up suddenly getting a little bit pink with some sort of stain. So you were aware of it but it didn't really affect you, particularly in your efforts?

GC: No, it had nothing to do with me. I was a law professor writing articles and arguing cases, I was not involved in the politics, in that kind of organizational politics at all. I went with LCDC in 1965 because LCDC was the organization that put out a call for lawyers and so I joined that call.

LA: Were you an activist or a lawyer; how did you see yourself? What is the civil rights lawyer?

GC: Lawyer. I went down as a lawyer. Goodman, Cheney and Schwerner went down as activists. I went down as a lawyer.

LA: You're very clear on that. Do you think other young lawyers crossed the line?

GC: Well, I would have done anything. Somebody asked me aren't you worried about being in South Africa? And I said, no, because I'm a lawyer and I'm vetted by the Bar Association and you feel as though you've got a cape on, at least I did then, I'd think so less now but anyhow, I had my lawyer cape on down there and so that's what I wanted, I wanted to use the skills I had. Why just do other work when you have a particular skill which you can contribute? So if I went down as an artist, I would have painted a picture. Use your skills as well as you can.

LA: Can you talk about and go back to this, how do you place lawyers in this longer civil rights movement and how do you measure the significance of the lawyer?

GC: I don't know how to answer that question. I think that laws, there are stages in advancement of social causes and one stage to get the people forward, you get enough of them forward and maybe you can get laws passed but then you have to get the laws implemented, and lawyers are very important. Lawyers doing lobbying and things like that can be important to earlier stages but in getting the laws implemented, I think that *Griggs* is a primary example of how lawyers can take up a statute and make it effective, and I think that that's their crucial role.

LA: But what about enforcement? If nobody's going to then enforce it...

GC: You have to have two things to enforce it. You have to have a useful interpretation. You have to have somebody to bring the cases but you have lawyers do both of those things and establish, and once you get a case and you enforce it and you get a good interoperation which enables the enforcement to be effective and then that has implications. When I started out in 1966 when I was in New York, there wasn't a single Black bank teller in any of the major banks in Manhattan and now you're hard pressed to find a white bank teller, because the banks were intelligent enough to see what the law was doing and why fight it? Go with it. It was to their advantage. It increased their applicant pool. So you create the legal precedents and the patterns of enforcement with a few cases and you'll find that major employers and other people who would be subject to the law begin to fall into place because most people don't want to have to fight quite a legal battle. So once you can establish the precedents, you succeed.

LA: There's a guy named Alexander Pekelis and he basically wrote what was the constitution for the CLSA, the Committee on Law and Social Action for the American Jewish Congress, which is a very interesting document but it has to do with law and social action. He is one of these individuals who believes that through litigation, in conjunction with social action, you actually can change patterns of behavior. Is that what you're kind of saying?

GC: That's exactly what happened but yes, my bank teller story is an example of that. You asked me a good question when you asked who is a civil rights lawyer. Jack Greenberg was a civil rights lawyer, that was his life. Mike Meltsner was a civil rights lawyer, that was his life. Richard Sobol was really a civil rights lawyer, that was his life. The civil liberties lawyers like Mel Wulf and all those, that was their life. I have not been as completely consumed by that for my life. That was my life for a period of about 15 years when I did civil rights work. I did immigration reform work and stuff like that from the late 60s to the early 80s but since then, I haven't done anything about that. So I'm more of a... I take up causes and I pursue them.

**56:20 minutes**

## **Appendix 2: Interview with Bill Goodman, Civil Rights Lawyer**

**21 January 2018**

**Recorded Telephone Interview**

INT: I need to ask your permission to record this to be able to use in my dissertation and possibly any subsequent work that I might do.

BG: Yes, you have my permission.

INT: The article I've got describes you as a renowned civil rights lawyer, do you consider yourself a civil rights lawyer and if so, what is a civil rights lawyer?

BG: I'm definitely a civil rights lawyer and what that means is that I primarily litigate issues of constitutional violations by public officials through the use of what's known as the Civil Rights Act of 1871, which was passed to enforce the 14<sup>th</sup> Amendment of the United States Constitution, that is when public officials violate either legal protection or due process rights.

INT: I know you worked in the South. We know what happened in the sixties, for instance, did you ever see yourself as an activist and civil rights lawyer, or a movement lawyer, or do you see them as totally separate things?

BG: Well, I certainly saw myself as a movement lawyer at one time or another, to the extent that there have been movements in the United States that I've been aligned with which would...

INT: Aligned with or represented or both?

BG: Both. The civil rights movement, certainly in the sixties and the anti-war movement in the sixties, those are things that I was most certainly part of and in the seventies, and anti-repression movements since that time, throughout that time and now, I see myself aligned with those. So to that extent, I'm a movement lawyer and a civil rights lawyer but I don't view myself as much of an activist outside the courtroom.

INT: And clearly activism can be exercised in the courtroom but I just remember when looking at the Lawyers' Constitutional Defense Committee, the classes that were given by Tony Amsterdam and Jack Greenberg at Columbia, very much pointed to or wanted to make that distinction, that you are going down as a lawyer, you are not going as an activist.

BG: Well, I understand what they were saying, put it that way.

INT: We all know your dad was a civil rights lawyer going back to very much involved with labor and the National Lawyers' Guild.

BG: Originally I would say he was a labor lawyer and not a civil rights lawyer

INT: Exactly, as were most of the lawyers that I'm looking at.

BG: He became a civil rights lawyer but he started out as a labor lawyer when he started representing the UAW in the late thirties.

INT: And I was just saying that most of the lawyers I am looking at, who I am tracing from the thirties to the sixties, followed a trajectory not unlike your father, in fact we just saw the film "Post" last night and I see it was Leonard Boudin who represented Ellsberg at one point.

BG: Did Leonard, I guess he did.

INT: Yes, because I've got Rabinowitz's book and all of this, it's interesting. Would it be fair to say that civil rights lawyering runs in the family?

BG: Well, to the extent that it went from my dad's generation to mine, yes.

INT: I guess what I'm getting at also is he talks a lot about being Jewish, his Jewish background.

BG: Yes, that was important to him, certainly.

INT: And a lot of the people I have either talked to or the interviews I have read indicate that, while not necessarily religious, there was a sense of Jewishness, of Jewish culture in the homes in which most of these lawyers grew up in and to which they attribute to some extent their own motivations, admittedly more in looking back then at the time, and I'm just wondering if that holds true with you?

BG: Well, my Jewish identity, I clearly identify as a Jew but I don't see a lot of... I don't know. I guess there's a humanistic quality that pervades Jewish culture that I identify with – the humor, the affiliation with those who were persecuted, that kind of thing. I have certainly seen that over the years, yes.

INT: What I'm doing in my paper is looking at what I see as a disproportionate involvement by Jewish lawyers in civil rights, both in Detroit and nationally, and if in fact that is true, and if you look at the members of the National Lawyers' Guild who started it and all the rest, I just wonder to what you would attribute that disproportionate involvement if not to something within the Jewish home, family, tradition, religion, whatever?

BG: I haven't really given it a lot of thought. Certainly I have observed, as you have, that there are a lot of people who are so-called active civil rights lawyers who have been Jewish and my own identity really has to do with my father more than anyone else, I'm sure. So that's a direct hand down. Over the years I've been very influenced by... have you turned up anything about Justin Ravitz.

INT: Yes. Well, not Justin Ravitz. But Mel Ravitz.

BG: Well, Mel Ravitz. I have no association with.

INT: No, he'd be your dad's generation I would have thought.

BG: Yes, but Justin was not related to him, they just happened to have the same last name. But Justin was very influential in my life as a powerful, effective lawyer and political activist, he was an activist. He was a powerful influence on me. So I don't know



and his partner, Kenny Cockrel, both of them together I think had a profound influence on me but I don't see that as a Jewish connection, particularly.

INT: But I assume Justin Ravitz was a Jew?

BG: Yes, he was. In fact, I think he was interested at one point in being a rabbi, actually. I'm not sure of that, I have to search my memory a little bit more on that one.

INT: Given the fact that you've done a lot of constitutional litigation, in following that course within the Detroit community, do you find yourself within a bar, within a group of litigators where there is a disproportionate Jewish representation would you say amongst the lawyers representing the people who need the exercise of constitutional protections?

BG: I haven't thought about that. There are not very many of us who do a lot of this kind of litigation.

INT: That doesn't surprise me either.

BG: I don't know. There certainly are a number of Jewish lawyers in that group but there are a number who are not and there are a number of African American lawyers who do it. So I'm not sure, I don't see that as a major theme here. It was true in New York and I was active in New York when I was at the Center for Constitutional Rights but you would expect that in New York.

INT: Yes, you would.

BG: Arthur Kinoy and Bill Kunstler founded the Center for Constitutional Rights in 1966.

INT: I noticed that in the interview I heard online, I think it was you specifically calling what happened in 1967 a rebellion as opposed to a riot. You made a very clear distinction. Why did you make that distinction and what does it mean to you?

BG: I think there was an ongoing struggle between the black community and the police department. The rebellion itself was initiated by a police raid on a so-called blind pig.

INT: What is a blind pig?

BG: A place where they serve liquor after hours or maybe just an unlicensed bar but it mainly refers to after-hours sale of liquor.

INT: But again a rebellion versus a riot, you're a lawyer, what's the distinction there?

BG: Well, there is no legal distinction I suppose between a rebellion and a riot. I don't think it has any legal impact either way but I think the rebellion indicates that there was a political boundary line that was drawn and that there were people on both sides and on the one side, you had the police department which was predominantly white at that time and on the other side, you had the black community. So that's what sparked and I think that's what kept it going for the number of days that it was going on.

And if you look at what happened, the Algiers Motel incident, for example, these are incidents where the police get into a direct and sometimes moral conflict with the black community and not only that, it didn't end in 1967 when the so-called riot came to an end, it kept going. There was the effort by the police department which was called STRESS that was part of that ongoing struggle to fight back. That was the police fight back against the black community and targeted against the black community. So this represented a long tradition and history of this kind of thing.

INT: My supervisor was specifically interested in this part of the project in Detroit because he wrote a book about it. There's this so-called Black-Jewish alliance, it's been written about a lot and people lament about the so-called demise of the so-called Black-Jewish alliance after 1965 and the Voting Rights Act. To some extent, people say it fell apart over the issue of quotas and also the issue of black militancy and increasingly black militant rhetoric. There's an academic who writes about something called civic nationalism and racial nationalism.

Civic nationalism would be an example of this idea that Jews very much bought into the idea that the Constitution offered certain protections and extended equality of opportunity to all its citizens. Then suddenly you've got the Civil Rights Act of 1964, you've got the Voting Rights Act of 1965 and then major cities erupt in either riots, rebellions, whatever which gave rise to a kind of racial nationalism but not the kind from the KKK but this time it was from black militants who were talking about separateness and wanting to be separate and the fact that civic nationalism had done nothing for them. Does that fit into at all the story of Detroit in 1967?

BG: I don't see a strong nationalist element of what happened in 1967 here. What happened in 1967 was white cops beating and oppressing the black community. It's not complicated and I don't pick up a lot of national strengths. There was a Black Panther movement here but, in my opinion, that was self-defense more than anything.

INT: Then how do you explain what was going on in, say, 1963 to 1965 with what then started happening after that until the early seventies; how do you account for a change in tone on the part of a more youthful generation of African Americans who... I was reading this book by Senator Fred Harris and some of the stuff when he went to Detroit with Mayor Lindsay, the stuff that people were saying. Basically it was the system screwed us and you've got nothing to offer us. Did you get that sense from the people you were representing?

BG: Absolutely, the system did screw the community here. The idea that people were massively arrested for curfew violations and thrown into conditions and situations that were unconscionable, yes. I don't know how you can deny it. That was rectified in Detroit, to a large degree, by the... I mean it wasn't rectified but it was expressed by the election of Coleman Young in 1971, I guess was when that election was, and Coleman really started to work on the composition and function of the Detroit Police Department. He wasn't by any means 100% successful but he certainly gave it a shot and there were a lot more African Americans in the Detroit Police Department after that.

INT: But interestingly you seem to be putting it down almost exclusively to the fact that the department was almost exclusively white and clearly was just rife with institutionalized

racism, but surely what led to the rebellion of 1967 may have been sparked by what policemen did but it had to be more than that, surely?

BG: Yes, there was probably a resentment about all of the obvious things, that the school system was highly segregated of course and that the neighborhoods were highly segregated and all of these things were things that it was recognized as a high level of resentment arising out of that, of course, without a doubt.

INT: As you look at what's going on now, your father started practicing in the thirties...

BG: 1929.

INT: And came up through the New Deal, to some extent, I guess?

BG: I guess.

INT: The Obama era would be another really good example of this civic nationalism, this belief that government, America institutions, democratic institutions could and would and had a responsibility to live up to delivering rights and protecting the rights of all its citizens, and then we've got this Trump reaction to the Obama years and a rise in what, I suppose would refer to as a type of racial nationalism in which we've got whites asserting themselves with a certain concept of what it means to be American and what America First means. Do you think that in any way that there will be a reaction to the Trump administrations assault on the Constitution and the courts?

BG: I certainly hope so. Yes, I think there'll be a reaction, the question is what form it will take and whether it will have any hope of success. My opinion on that is that what Trump is really about is destroying the basic fabric of Constitutional rights that we have, that have, to a greater or lesser degree, protected us over the years and if those are weakened or eliminated, whether the ability to fight back will be there and if so, will it be effective? Those are abstract thoughts but that's my approach to it.

INT: And where do you see or do you see a role for the lawyers such as yourself and the courts in this; who has to fix it, who has to address it other than the electorate obviously in terms of going to the polls but in the meantime?

BG: There's always room for protests and activities in the street and that's the driving force to much of this. The role of the lawyer in the court is to challenge some of the things that are done, to try to challenge them, to try to do that as a way of publicising what's happening and also of being able to force answers to hard questions from public and often racist officials; the best current example of that might be the litigation around the poisoning of the people in Flint, Michigan.

INT: In the forties and fifties, it was a lot of litigation in terms of the restrictive covenants and school desegregation and then suddenly you had a generation of young Black people taking to the streets in the South and a bunch of lawyers being called in to get them out of jail but it was a very uneasy alliance. Were you aware of that then; were you part of that at all?

BG: Was I aware of what?

INT: Suddenly instead of the lawyers leading the thing, suddenly it was SNCC and others and people like that, the lawyers were kind of following their lead. I think Jack Greenberg in his book talks about it was out of the courts and into the streets. I like to think of it as out of the courts, into the streets and back into the courts.

BG: Yes, that's a good description. I started practicing and doing this kind of thing in 1962 when I worked in Virginia with a lawyer named Len Holt, summer of 1962 my first year after I left law school. Have you talked to Len?

INT: No, can you put me in touch with him?

BG: No, I don't think so. I was wondering whether he was even still alive. I heard he's very troubled. He lives in San Francisco but I worked for Len Holt in 1962 and it was a very eye-opening, transformative experience.

INT: Can you tell me about that?

BG: We would travel round to different communities in Virginia and in North Carolina, we went to Lynchburg, we went to Danville, a couple of other communities. Len would get up and sing songs, sing freedom songs as he called them and get people to join the movement and by joining the movement, kind of what they had to do was sign up in what he called these omnibus integration cases. They were really desegregation cases. So he would file lawsuits against, let's say, every public official he could come by in, let's say, Lynchburg, Virginia to desegregate the schools and the jail, the hospital, public parks, everything.

INT: And put them all together you mean?

BG: Yes. They were called omnibus lawsuits. I used to draft some of these for him and we would run them off on mimeograph machines and serve a million copies to everybody. It was extremely amazing experience to do that and go through that and see that and in doing that, that was really the beginning. SNCC was beginning and Len and I were involved in some of these conversations. We were in discussions with people, primarily located at that time in Albany, Georgia. That's where I think it got rolling. And they had a profound influence on what was going on, what was happening. At the same time in Monroe, North Carolina, you may know about Rob Williams, have you read his book *Negroes with Guns*.

INT: Yes, this is about black self-defense. Is this where he gets booted out of the NAACP because they think he's too radical.

BG: Yes, that's right. Anyway, there was a riot, I guess you would say, in Monroe in 1961 and Len and I and a couple of other people went through Monroe in the summer of 1962, that summer that I was there, and it was hair-raising. Everybody was strapping on a gun and the whole courthouse was ringed with these white guys all of whom had these guns and he walked in, saw somebody in the jail and walked out. It was fascinating, really.

INT: There's a woman named Tomiko Brown-Nagin who wrote a very good book and she clearly has huge amounts of respect about Len Holt and refers to him as an activist

lawyer and I think in one of the interviews your dad gave, he talks about bringing Len Holt to the NLG meeting and he just fires them up. You make a distinction between lawyers like Len and yourself then.

BG: I make a distinction?

INT: I asked if you were an activist. He clearly was an activist lawyer.

BG: Yes, Len was. He viewed himself as a movement leader. It was hard for me to be a movement leader in the civil rights movement since I was this white guy, a white kid at that time but yes, I certainly make the distinction that you're referring to.

INT: Is there a place for that intersection, how can you not have an intersection of the personal and the professional?

BG: You have to. The best closing argument I ever heard in a trial in which I was involved was one that was given by my friend Justin Ravitz and this was a sit-in at the Michigan State University Union right after the invasion of Cambodia and they were all charged with trespass and Chuck stood up in front of that jury and said, 'We all know this is a racist sexist classist society and it's a disgusting society and that's why I hate America. That's why I'm a criminal lawyer because criminals are the only people who want to destroy this country. That's what I want, and I'm embarrassed to be standing up here representing people who aren't even criminals.' and we actually won that case.

INT: Who picked the jury?

BG: The fact was they didn't have much, they couldn't prove one of the important elements of the charge so yes, we won but what I'm referring to here is the fact that he clearly crossed that line between lawyer and the cause and became a part of the cause and he did it very effectively, brilliantly actually.

INT: There's a whole breed of new historians who deride *Brown* and think *Brown* was the lodestar that crippled civil rights litigation and the civil rights movement because it became too race based and had abandoned the economic type rights that your father began

with, and then I got a whole bunch of people who sit there and say but that's not what *Brown* was about. *Brown* wasn't just about moving bodies around, he was about much more than that and you could apply that same argument to the Civil Rights Act of 1964 and the Voter Registration Act because yes, they were important but did they actually change things on the ground? Certainly not immediately because there's always a lag time. How important do you think those kind of landmark decisions in terms of actually effecting social change and do you see your role as a civil rights lawyer as in part what you do aimed ultimately towards effecting social change?

BG: I think they're important. I would not want to underestimate the effect and power of the decision in *Brown v. Board of Education* and lest we forget, up until that time, school segregation was viewed as constitutional. So in other words, what had prevailed up until *Brown v. Board* was disgusting, so to sweep that aside, or at least begin to sweep that aside, had real importance. To me the work I've done has always been most important in that it moved... it allowed breathing room and space for the movement that I was trying to represent more than anything else, not so much creating major precedent. That lasts for a minute and a half.

INT: But do you think through what civil rights lawyers do ultimately that the decisions taken in court by judges and jury, if they're to be of any significance, have to have some sort of social... to see it in reality on the ground change social patterns, social behavior?

BG: I think it's a much more complicated pattern and movement than that. It's not just a direct one-on-one relationship between a lawsuit and social change. They go back and forth and it's a piece of it but it's certainly by no means the largest piece. The largest piece is public will to change things.

INT: It is but if it isn't underpinned...

BG: No, I'm not saying it's not important and not consequential. It is but it's not everything.

INT: If there's anything you would like to add at this point, I'd love to hear what you have to say.



BG: I'll tell you a story. Since you asked about *Brown v. Board* and the impact of these cases, when I was in Virginia working with Len that summer, we went into court on some case, it wasn't even a civil rights case I don't think, just I went along with him and I noticed the bathrooms had signs up that said white and colored and so I went out and I said to Len, what the hell is this? This is horrible. *Brown v. the Board of Education* has been around for years now, this shouldn't be and he just smiled and he just said hold onto that.

Then we went in and we met with the judge on something or other, it was a chambers conference and at the end we were leaving Len said, 'Your Honor, this is Mr Goodman, he goes to law school up north and he has a question for you. So I stumbled and I mumbled and I got it out and the judge gets on the phone and he calls somebody, probably the janitor of the building and he says, Tom, you mean to tell me those signs are still up? And the next time we went into the courthouse, the signs were down so I won my first case by raising the issue in that way.

INT: Was your dad still alive when you did that?

BG: Yes, he died in 1997.

INT: He must have laughed his ass off over that.

BG: I'm sure he did.

**Recording ends 39:12 minutes**

### **Appendix 3: Interview with Philip Hirschkop, Civil Rights Lawyer and founder of the Law Students Civil Rights Research Council (LSCRRC)**

15 July 2017

Recorded Telephone Interview

LA: Do I have your permission to record this for use in my dissertation please?

INT: Yes.

LA: And can I refer to you as a lawyer or a civil rights lawyer?

INT: Civil rights lawyer is fine.

LA: And I can list you as one of the founders of the Law Students Civil Rights Research Council, correct?

INT: Yes.

LA: In our preliminary conversation, I asked you about specific people in terms of those who founded the Council and also talked about the sponsors who were listed on this paper that I had, 17 or 18 of them, in other words at least 50% of them, including law professors, people affiliated with various organizations were also Jewish. You kind of laughed at the time and said they were all Jewish. Why do you think that was?

INT: I think it's our heritage. My experience in the civil rights movement itself was that of the major Caucasian lawyers that were in the South, carpetbag lawyers, they were not Southerners, the overwhelming, I'm talking about 80-90 per cent were Jewish and they came from Jewish communities that had history of seeking to achieve civil rights, particularly New York.

LA: It's kind of interesting because, in a way, I was reading Julian Bond's Foreword to a book called *Strangers and Neighbors*, relations between Blacks and Jews in the US, and he says or poses the question, where would we have been had we faced our common enemies alone? So I would say to you, what would have been the history of the CRM or its legal history had it not been then for Jewish lawyers?

INT: Well, it would have been far slower in developing. We wouldn't be nearly where we are now. Just starting with *Brown v. Board of Education*, the number of the lawyers who backed up the African American lawyers who led the fight were Jewish, starting with the lawyer who eventually became the head of the Legal Defense Fund.

LA: You're referring to the Inc Fund, Jack Greenberg of course.

INT: Yes.

LA: I think one of the things that's interesting, in reading a little bit about LSCRRC, one of the things I came across was that it wasn't just about race. The volunteer law students' movement for equal justice publishes this introduction and in it is says 'it seeks to arouse, persuade and reproach the majority of lawyers and law students that all men stand equal before the law,' but not just in matters of racial justice. They talk about distributive justice, in other words availability of legal process to the poor. How significant was that do you think?

INT: Well, that's just verbage right now. When LSCRRC started out, it started out as a civil rights organization.

LA: Race-based?

INT: Yes.

LA: I guess why I make that point is because what I'm trying to look at as collective continuous contribution by Jewish lawyers to a longer civil rights movement going back to the thirties where you actually start with, as it were, workers' rights, unions, that kind of thing. A lot of the lawyers started out as labor lawyers then, Jewish lawyers.

INT: Absolutely.

LA: Coming up through the New Deal which some people apparently referred to as the “Jew Deal.” So that’s why I’m just trying to make both a distinction and to point out that rights in America in the sixties were very much race-based and there was race, but also that it wasn’t just about race.

INT: No, and when you go back to the history of CR, the labor lawyers, the workers’ comp lawyers who founded ATLA, the American Trial Lawyers Association, all came from labor lawyers, union lawyers. The first big two movements social movements in terms of equal rights in the U.S. was women, the suffragettes but more than that was the labor lawyers, child labor, founding the AFL-CIO, the Wobblies. There’s a whole thing through the thirties, many of the great names and some of these lawyers from Alabama, Tennessee, far before race was a major element in terms of social change labor lawyers.

LA: But interesting too because while Jews, if you take away the garment industry, were hardly well represented in the rank and file of, let’s say, the United Auto Workers or the meat packers in Chicago and the other in Detroit, and yet their counsel were socialist or left wing lawyers who were Jewish like Maurice Sugar or Eugene Cotton or Ralph Helstein.

INT Yes.

LA: Where does this come from.... I’m trying to seek to explain that, where does personal identity link up with professional identity; how does that play out?

INT: Well, if you go back to the New York ghetto at the turn of 19th century, you had Jews who were definitely oppressed. They weren’t in the controlling majority, the Irish may have been after a while. So they were oppressed and they were historically a group who sought education, and the ultimate thing, and that desire for education, desire for knowledge and desire to break out of the ghetto made them want to achieve social justice. They were oppressed. Unlike blacks, they didn’t have the chains and bondage of slavery around them and there was enough of them to concentrate in one area like in New York

where you could exert some influence, you could get political clout So it starts I think in the NY ghetto and it spreads. Cleveland got a big solid core of Jewish people and Detroit and they went into the professions, Jewish doctors, Jewish lawyers. My brother was rejected from Princeton because they'd filled the Jewish quota at the end of the Second World War but had a very distinguished career. That's where it came from.

LA: What about your own motivation? Did you know when you decided you were going to be a lawyer, that you wanted to be a 'civil rights' lawyer and why did you start the Council?

INT: Well, it's all serendipitous. I was going to be a patent lawyer. I'm a graduate engineer. I have a liberal arts degree and a mechanical engineering degree, and I didn't know what the hell I wanted to do. So I ran into a professor I'd never spoken to, a very renowned history professor at Columbia where I went to school. I was an ex-Green Beret paratrooper and didn't know what to do with my life. I took the law boards. I had nothing else to do and I felt like 99 percentile or something and so I went to night law school and worked the U.S. Patent Law and thought I'd be a patent lawyer.

Then I ran into a law professor in my junior year and he invited me to a party of civil rights lawyers. That was the day President Kennedy met with all the white and black lawyers from the South who he invited after the killing of the four girls in Alabama. I then met Bill Kunstler and Kinoy and became a civil rights lawyer. Really very serendipitous.

Now my background in New Jersey, we had lived in a tough area of Brooklyn as a child and faced a lot of oppression. My father was a waiter and we moved to New Jersey so we could get away. He didn't want his sons raised in the violence of that very tough area.

LA: Was it a Jewish area then, not a Jewish area?

INT: In New Jersey?

LA: No, before you moved.

INT: Oh yeah. We'd lived in Williamsburg in Brooklyn. The next block over was a founding area of Hasidic Jews in the U.S. My uncle and my grandfather were extremely religious Orthodox Jews. My parents were Orthodox. Even after we moved to New Jersey with a kosher house, separate dishes. My mother had cancer when I was young and when that was too hard to keep up, we sort of broke tradition. It was sometime when I was in college, they stopped doing Friday night candles.

I got to New Jersey and there were very few Jews there. There was a synagogue in town and barely ten families but I saw African American people there who were migratory laborers and living in horrible conditions. My mother was a person who never had a cross word for anybody, she was full of love. My father, he wasn't rigid, but everything was right or wrong and with that training and what I saw, when I was invited to the party in 1963, it was sort of a natural thing to do.

LA: Do you credit your background, do you feel that you in some way drew from a reservoir of Jewish familial culture, if not religious culture?

INT: Absolutely. More than anything else is music. As a boy, I played the cello and my brother played the cello, taking advanced lessons. We loved music. It's something that's always been very common to the Jewish people I've known in the U.S. a love and respect to music and my hero in life in Oscar Hammerstein, although born Jewish, he was raised I think Episcopalian.

LA: But how did your family experience inform your ultimately becoming a civil rights lawyer, do you think? What was there that drew upon... whether or not you were conscious of it at the time, you may well not have been?

INT: I don't even know that today I can give you a really concise answer on that. My parents what they went through, my father struggled to support my mother's whole family, brothers, throughout the Depression. I wasn't there, I was born after the Depression but I know of those things. The work ethic is enormous, both in my family and the Jewish families I know. It's a trait far exceeding almost any other religious group, an enormous work ethic and a desire for knowledge that is also fairly strong and may exceed all other groups.

It was my parents, their beliefs. They weren't involved in civil rights at all. Neither one had advanced education but somehow... my mother played a violin as a child. She grew up to play the piano, my mother never took a lesson. So in her old age when they retired to Miami, she made my father take her round the old age homes and she'd put on shows for old people. They would pick up old people who had no transportation and take them to doctor's appointments. But they weren't crusaders. They were never involved in civil rights. They just did it because it was the right thing to do.

It was serendipitous. I was fairly independent as a kid. I went off and joined the army at 18. I volunteered for the draft of the Korean Veterans and ended up joining the Green Berets. I don't know why. I'm scared to death of heights. It seemed an adventurous thing to do and then when I got out...

LA: Foolhardy might be a better word.

INT: One of the major changes in my life was going to Columbia as a young man because New York City was just a magnificent experience. It opened up the stage and music and culture and things I'd never seen and known about. I'd never been to an art museum. Until I went in the army, I'd never been on an airplane. They flew me to Georgia to go to the signals corps. I'd never been to a camp. The first camp I went to was boot camp when I went in the army. I worked summers.

LA: You're still working.

INT: Yes and I still have an enormous work ethic. My kids have it. It's a combination of things. My biggest motivator is music though, it's the Broadway stage.

LA: But that doesn't help me. That's for another conversation.

INT: What brought me back into... I was raised Orthodox as a child but then that sort of went away. I was in a small town. We had to sing in the Christmas plays about Jesus and we never got a Jewish holiday off. We stopped being very religious, we stopped observing all the traditions by the time I was in college and I ran off to the paratroopers.

In civil rights I was in Mississippi for a big meeting, COFO summer when the three boys got killed down there, and I looked around the room and of the ten carpetbagger lawyers, and these were the major white lawyers involved in civil rights, all but Ben Smith from New Orleans was Jewish. And it really got me thinking about it. And of course that was my experience in the formation of the Law Students Civil Rights Research Council, that every major person involved in founding the council and backing the council, our major funding came from Jewish people.

So it made think about it and it brought me back intellectually to it. Then as I got back into music, I started college as a music major and quickly changed because it really wasn't what my interest was in terms of the profession. And I think in song. My kids always kid because I sing all the time. I'll be driving a car and someone will say something and I'll sing a show tune about it, to myself. Sometimes in court judges will say what are you doing and I'll be sitting there not thinking and just humming. I always tell my kids there are two great saving graces; humor, you look at many of the great comedians in America and they're predominantly Jewish, and music.

LA: How would you define a civil rights lawyer? I asked you if I could identify you as a civil rights lawyer and you said yes. What is a civil rights lawyer?

INT: I guess it's somebody who devotes or uses his legal abilities to protect the rights of other people.

LA: And in so doing, especially as you look back to the civil rights movement as we call the movement of the sixties especially, the point at which you were very, very active as a young man, as a young lawyer, as a student, do you make a hard distinction between a civil rights lawyer, let's say, activist? Did you ever consider yourself then an activist? Were you a civil rights lawyer or were you an activist? Or perhaps is, by definition, a civil right lawyer automatically an activist?

INT: No, not necessarily. They're fairly conservative civil rights lawyers. I was on the ACLU Board for 20 years and Ruth Bader Ginsburg was a friend, she was on the Board, she was one of our three general counsels, and I always consider her fairly conservative.



Now she was an activist. She taught at Columbia and helped found a big women's rights project. I was one of the first three males in the ACLU on the founding of the national woman's project and one of the other lawyers wasn't at all an activist. He was very conservative and very much into civil liberties. I'm not drawing a distinction between civil rights and civil liberties lawyers but there is a distinction.

But I had very middle class Jewish values. So my crowning achievement I think in my career was as chief counsel to the peace movement against the Vietnam war. So I negotiated most of the major permits for practically every major demonstration in Washington in the late sixties through the seventies, and had my own police cruiser.

LA: Who were you actually acting for?

INT: I represented the New Mobilization, the Mayday Collective.

LA: Loads of individual organizations that were against the war.

INT: Oh yeah, and then when there were major mass arrests, I was chief counsel.

LA: So when I earlier asked you, and we were talking obviously about the sixties being race-based, you took your skills and I suppose your values and I'm going to assume your own beliefs – you were a Green Beret, were you against the Vietnam War?

INT: Very much so.

LA: So you took your personal conscience all the way right through the sixties going into the seventies and obviously beyond because you now represent PETA, do you not?

INT: Yes. I didn't look at it that way. I represented Phil and Dan Berrigan and Mitch Steiner when he first started out as the leader of homeless movement. Dave Dillenger, the Peace Movement, they were driven by their activism. I wasn't at all. I always thought I was Jewish. I was given a choice of doing one of two things and it seemed the right thing to do.

LA: So what were you driven by? If you could in one sentence tell me what drives Philip Hirschkop, what is it?

INT: I guess a sense of justice. I hate injustice. But I don't get up in the morning thinking about it. Now with Trump as president, you've got to think about it but throughout all these different movements I was in, I was early in the movement for teachers' rights and represented the National Education Association, it was my first major client.

LA: Well, you say you were in it but you weren't. You were representing them, you were a lawyer, you said you were not an activist, you made a distinction there.

INT: That's right. So the teachers would write in that they were horribly oppressed and the National Education Association ... I was asked to call them and look at them and give the poor guys and poor women who were getting screwed and I would say they deserve some help, maybe you should hire a lawyer, maybe I can help. I was responding to those. The same with animal rights.

Now on a slightly different level, the hallmark of my career has been formative law. So I'm always willing to bring a lawsuit that doesn't necessarily follow very decisively what some other lawyer maybe did wrong. You look at what they did and you look at precedent but you're always looking to change the law to make it more modern, more current, more responsive to current needs.

LA: That's really I think significant because I was going to ask you is there still a role for the cause lawyer and if so, how do you proceed given the current climate politically, publicly and in the courts? Because you're always working within the limitations, are you not, of the law in a democratic society?

INT: The opportunities may be not as pronounced as they were during the early civil rights movements, early peace movement, the early women's rights movement, there is the LGBT community and their fight for rights now. There's the denial of voter rights is getting very difficult and it's easy to defend to say it's the right thing to do and you have to

balance that off with supporting a family and make a living and desiring to drive a nicer car or bigger house, which is normal.

The bottom line is that prejudice is a very normal thing. You may prefer a lady with a certain figure, you may prefer a man of a certain height or build or blue eyes or brown eyes. You may not want to ride on a bus with certain people. You may not want your kids marrying outside your race or your religion. Prejudice is something we're born with. You have to learn to control it. It gets unhealthy sometimes and sometimes it's not unhealthy. So it'll always be there. There will always be oppression. There'll always be a majority or a minority trying to exert themselves. So there's plenty of opportunity now, as there was before, just representing the Islamic or the Arab community. There's all sorts of opportunities, all sorts of need.

LA: One of the things that impressed me was in looking at this paper that I found in some University of Wisconsin archive, was all of the work that LSCRRC did in terms of reviewing cases brought before the Supreme Court, looking at bail and States' rights. It just went on and on and on and I just thought, can you remember back to that time, anything you considered most significant in terms of the contribution to the law that you as students, as LSCRRC working for, aiding LDF or Kinoy or Kuntsler or whoever, I was looking at the list of who the work was done for and it's fascinating. Because you yourself, you're talking about changing law or adapting law. It's kind of like the Constitution is supposed to be this living document. I suppose the law as part of it enshrined within the Constitutional amendments become very significant.

INT: Unlike other organizations like NAACP, ACLU, LSCRRC never was a litigative organization. We didn't bring lawsuits, we didn't enter into the movement. We supplied persons to help with that and that was a massive input because a lawsuit is a very pragmatic thing. You may have lots of principles but if you've ten people in the Attorney General's office and the other side is just you and they can file briefs every week, you can't match that. Nowadays, of course, with the computers and everything, you can't begin to keep up. In the old days, if you got a lot of documents, you had to go through, you had to mark them, you had to find what was missing. It required staffing. It's a very pragmatic thing.

By supplying back up law clerks and paralegals and some very fine lawyers, by the second and third year, we were supplying people, particularly a group of people we sent to Louisiana, very prominent civil rights lawyers. So it not only helped the lawyers function. King who did some great things in Georgia, one of the original LSCCRC board, is just writing a whole book on his experiences there. We staffed a lot of people and it let them function. It let them take on cases they couldn't otherwise do and then some of these people who provided the staffing, it was a training ground for them to become very prominent lawyers. So one of the lawyers we sent down to Louisiana ended up, after we formed the national prison project, becoming its executive director, and was able to do great things and make major changes in prison in the US through that.

LA: One other personal question is, you have become now, because of the film, so associated with *Loving*. Is that something that you are happy to dine off of or do you feel that your career has been so varied and so much bigger than that, that you feel confined by it?

INT: No, it's been kind of fun in the last year and in a way it's been a nuisance but a compliment you and say you've achieved wonderful things, you've got to feel good about that, you can't feel bad. But I've had much more difficult cases. I have cases that I like much better than the *Loving* case. None that had such a big recognition but as I said a little while ago, my biggest achievement was the work I did in the peace movement.

LA: So I just would like you to expand a little bit, I want you to talk to me about a civil rights lawyer and how much your civil rights lawyer's personal identity is caught up with professional identity, if in fact it is; do they intersect?

INT: Well, they intersect but here in Virginia, although now with all this *Loving* and some of the other major cases: first case for women in higher education that was a massive victory and teachers' rights case I brought to the US Supreme Court, knocking out mandatory pregnancy leave for teachers which was almost every school board in the US in the 1970s. I've gotten recognition for those things, won some awards but on the other hand, I've had a very successful practice doing personal injury cases and complex litigation. I've handled major criminal cases of national prominence.

LA: As far as the south goes, I was looking at some of the quotes and how often, right from the Scottsboro boys and their lawyer, and Jews as ‘nigger lovers’ and all of that, it appears that a lot of the Jewish lawyers who went South, and we know there were a lot of them, were tarred. Did you experience any of that? Was being a Jewish lawyer in the South even worse than being just any old white lawyer?

INT: Yes, it was, in a number of ways. One thing is usually when it gets to the Jewish community in the South, they’re not racist but boy, they don’t want to take on... they don’t want to rock the boat at all. When I was stationed in Augusta, Georgia in the army, I saw that. The Jewish families, they weren’t the ones who were standing keeping the black kids off the bus but they weren’t rocking any boats because they’re in a precarious situation being Jewish.

And I myself, a lot of times I was called more a communist because of my work in the civil rights movement, in the peace movement than I was called a ‘nigger lover’ or a Jew bastard.

LA: Well, also the disproportionate number of... it’s not that most communists were Jews but a lot of Jews were in fact communists, so that added to, I think, certain ammunition for anti-Semites, during the Cold War particularly.

INT: Yes, it is but there were Jewish quotas when I was a kid and, as I said, my brother couldn’t get into... but I went to Columbia and I think half the school must have been Jewish, certainly a lot of Jewish people at Columbia College in New York City, and I was in a very substantial Jewish community in New York City. Although as a kid, I remember my brothers went to the Jewish Hebrew school and we had to walk through an Irish neighborhood and it wasn’t safe. There was an Irish neighborhood, an Italian neighborhood, a Jewish neighborhood and that was a long time ago.

LA: Well, I think unless there’s something you would like to add at this point in terms of my thesis of this significant collective contribution of Jewish lawyers to a whole range of civil rights and continuing... do you think it’s a valid thesis?

INT: It's part of Jewish culture, being involved in the progressive movement. So whether it's Hollywood, whether it's music, whether it's the development of science and medicine, that seems to be... and a Jewish lawyers involvement in civil rights is just part I think of that movement, just one other element of it.

LA: It's interesting that Ruth Bader Ginsburg has in her office a variety of different glass and stone and painting. Justice, justice ye shall pursue and, in fact, it is a commandment.

INT: Yes.

**Recording ends 37:33 minutes**

## **Appendix 4: Interview with Pamela Horowitz, Lawyer formerly with the Southern Poverty Law Center**

25 July 2016

Recorded on FaceTime

PH: No, I thought he had been earlier. Well, he had some association, he was not clean.

Q: Certainly not in the eyes of Hoover's boys, no.

PH: Right.

Q: But I don't think he actually joined, in the same way that Rabinowitz did. At some point he also...

PH: That may be true.

Q: I need to check that but I'm sure I've read that he was not. I mean loads and loads and loads... do you think you had a file? Do you know if you had an FBI file?

PH: I've never asked but I don't think so because during that time, I was in my obliviousness in Minnesota.

Q: So civil rights lawyering, when you did it, it was kind of a sexy thing to do. If I look at America now from outside, I see, not that it probably wasn't always but a very divided America. I see young Black men being literally executed by police. I see communities becoming more at odds with one another. Where does the lawyer fit in today? What is the future of civil rights lawyering and where do you see the Jewish lawyer in all of this? Does that involvement continue? Is it continuing? Should it continue?

PH: Yes, I think it does continue. I think the law is no longer seen as a vehicle for social change because of the composition of the Supreme Court, but I think that that has been the case far more often in history than the other way around. So certainly there are cases that are being brought, and usually by the other side but they're being won. There was a big victory for affirmative action which really nobody saw coming in this term and it wasn't just because of Scalia's absence, it was Kennedy switching and it would have been won even if Scalia had been there. But it isn't the same, and Obama has gone a long way toward changing the Circuit Courts but we still need one or two appointments on the Supreme Court, but you still have a lot of lawyers dedicated to social justice issues. I mean look at the Southern Poverty Law Center and how it's grown over the years and there are many other groups. So there will always be a need for lawyers who dedicate themselves to

civil rights because the law will always be a formidable force in our society, unless we become an anarchy, which could happen.

Q: It's interesting that in Jack Greenberg's book, he points... he was going to write this novel about what would have happened had there not been a civil rights movement, Pam Horowitz: Permission "You have my permission to record and use the material in conjunction with your dissertation and any other published materials that follow that."

Q: What do you think led you to civil rights lawyering?

PH: Well, it was, I guess kind of a slow process. It was not exactly a lightbulb moment. 1968, as you know, was a pivotal year in American politics and it was year that first, Martin Luther King and then Bobby Kennedy are assassinated. I had just graduated from college. I was working, and I was then working in personnel for a defense contractor and becoming more and more concerned about the war in Viet Nam which of course was raging at that time, and it all just kind of came together and I thought I should be doing something to change the world and so that was my inspiration really to go to law school, which graduated from college in '67 as an econ major, Nobody had mentioned or encouraged me in terms of graduate education but it was also one of the few times actually that the law was seen as a vehicle for social change and that was primarily because the Supreme Court... it was a moment in time or about a decade in time, when led by Earl Warren when the Supreme Court was open to being a vehicle for social change. So I started at law school in the fall of 1970 with a lot of other people who were in law school because of messianic-like urges. So when I started, I knew that I wanted to do civil rights and poverty litigation so that was an obvious path to the Southern Poverty Law Center.

Q: Which I think some people assume dealt with economic matters rather than race based rights, I would argue are intertwined. Joe Levin on name change etc.

PH: That's like the NAACP which it was suggested should change its name but that isn't going to happen either.

Q: Let me ask you, ...do you think that being Jewish had anything to do with your decision whether at the time or as you look back in terms of memory, I guess...

PH: Not in the way you might think. I think it probably... the Jewish part of me and the fact that my father was Jewish and my mother wasn't, the biggest influence of that for me of that is that I understood from an early age that my parents had suffered because of that and that they were therefore very sympathetic to any other kind of discrimination based on,



ya know, race, religion, national origin. So that was kind of the ethos with which I grew up and I think that, even though they were also Republicans at a time when decent Republican was not an oxymoron, they left me very open to responding to claims of race discrimination and other kinds.

Q: Joe Levin suggested you were their leading advocate in terms of gender discrimination and in fact I think you went before the Supreme Court with a gender case?

PH: Yes, that was also an issue about the SPLC and its mission and we decided that, just as it is with race, gender has also and still has an economic component and that you could easily argue that gender discrimination also fit within, if you will, the mission of the SPLC. I had early cases. You know it was 1964 that the Civil Rights Act was passed which prohibits race and sex discrimination, but sex was added as an afterthought, if not a joke, and it took years before anybody really thought about pursuing gender discrimination under Title VII of the act, and those claims are always referred to as Title II and I guess it was 1972, it must have been 1975 when a woman came to us who wanted to be a police officer in Montgomery. And so, I did handle that case for the center and that was one of the early gender discrimination cases and a second case came in involving women, two different women who just coincidentally came to us at the same time, one wanting to become a state trooper, one wanting to be a guard in maximum security prison and were prohibited from doing so because partly because there were height and weight requirements. We sued on behalf of both of them. It was the prison guard component of that went to the Supreme Court and I got to argue that before the Supreme Court actually before I was eligible to be a member of the Court because I had not been a lawyer long enough. And then my career was downhill after that.

Q: An interesting point about that because obviously I'm interested in the Jewish aspect of this. It's interesting that Jack Greenberg, in *Crusaders in the Courts*, has a quote somewhere where when he stands outside the Supreme Court, he felt as if he should have had a skullcap on his head, not unlike Mike Meltsner who also worked for LDF, these are two Jews who very much see themselves, probably as atheists, but also will sit there and tell you that, I haven't talked to Jack, but Mike, is there something about their Jewishness and lawyering? Yes. Was it religious? No. So you go before the Supreme Court. Is there something. What are they trying to tell me? Do you feel what they feel?

PH: The whole thing about being a cultural Jew, I think which most, most certainly not all but most of the Jewish people I know would describe themselves as cultural Jew. A big part of that culture is, ya know, the social justice component of what it means to be Jewish.

There's a new and quite wonderful documentary called "Rosenwald," made by a friend of mine who specializes in documentaries, films on Jewish topics and Rosenwald was the president of Sears, who ironically I went on to represent later in my career in private practice and he was not as well-known as, say Rockefeller, but gave away what is a billion dollars plus in today's money. Most of it directed at what was then Negro philanthropy and built five thousand schools in the South for Negro children who would not otherwise have been educated. And so that film talks about a lot and I don't even think Rosenwald himself was an observant Jew, about how, ya know, there's a phrase in Yiddish, *tikkun*, something, about the need to do good and so I think that's a very big, big part of anybody who is Jewish however that moniker gets assigned to them. [my note: *tikkun olam*...*Tzedek*, the root of *tzedakah*, means justice or righteousness. Acts of *tzedakah* are used to generate a more just world. Therefore, *tzedakah* is a means through which to perform *tikkun olam*.] Philanthropy is defined as giving money in order to promote the common good. And whether anybody think that it's rightfully assigned or not.

Q: Everybody seems united it's more cultural rather than religious. Thinking about authors like Greenberg and Kaufman who indicate this was a relationship, the Jewish Black relationship was as motivated by as much self-interest as it was by doing justice, of sympathy. Do you believe that to be the case?

PH: Yes, yes Although I think it's complicated. (asks about whether I obtained a copy of Julian's speech.)

Q: Yeah and I'd read stuff before.

PH: I think that speech has the kind of nuts and bolts of what made it and I still think makes it a special relationship but has complicated it over the years, particularly over the issue of affirmative action but just the whole role that Jews, being the wealthier, being the merchant class if you will, the landlords, the store keepers, how that played out in the relationship I think is a factor. and that there are reasons why the relationship is not as close or had its weak moments over the years. But it's still a special relationship and I think there's no question it embodies a caring and concern on the part of Jews that you don't find collectively in other groups.

Q: Do you think, though, that to some extent that relationship has been overly romanticized as the 60s were potentially romanticized over a longer civil rights movement. There was the whole young people going South. They only went for a short time. To be part of it was exciting. Even Victor Rabinowitz mentions the high he got from labor lawyering much earlier was not so dissimilar to what younger lawyers and people were

feeling again in the sixties over race based civil rights, and just wondering if that legitimate feeling of justice and caring and identification becomes a little bit overly romanticized when you periodize it.

PH: I would say not romanticized as much as exaggerated. I think for the people who participated, it was the most important and the pivotal moment in their lives. It was like being at war and so they bonded permanently with each other. If you look at the Student Non-Violent Coordinating Committee, the people who were in it, black and white, pretty much stayed in some kind of social justice role their whole lives and they would not say that it was romanticized. I think what happens is people exaggerate their roles. And people who maybe went to participate in one march, then in the telling it becomes that they gave their youth over to the cause, and a lot of people claiming to have been a part of it who really weren't a part of it at all. But I do think that it was a special time and that a number of just really courageous people really did change their world and so I would not say that, to that extent, it was over-romanticized. I'd always thought that in terms of the Black-Jewish relationship, that Jews cared a lot more about it than blacks did and even now, whenever, I mean Julian was never asked by a black audience to give his Black-Jewish speech, only by Jewish audiences and so I think it's Jews who talk about the relationship way more than blacks do.

Q: That was going to be my next question. I was speaking to a young Jewish lawyer who was helping me about a case by the name of Joseph Spell, who was represented by a Jewish attorney, along with Thurgood Marshall, interestingly, which is going to be a movie, I think I might have mentioned that to you. Do you know about that film?

PH: No.

Q: Anyway, very interesting actually in an ethical sense and this Sharfstein is the lawyer, Daniel Sharfstein, suggested to me what you have just suggested and that this desire to have, or this recognition or whatever you want to call it, of a special relationship between Jews and Blacks was and remains more important to Jews than it ever was to the average Black; maybe not to the elite, to the leadership, which I think in looking at some of the...

PH: Right.

Q: If I go back in NAACP files, which I have done at Cambridge University, you can see it coming from both sides, especially when the constituencies, if you will, of, let's say, the Jewish Committee or the Jewish World Congress and the NAACP, when their constituents are out of step with what they are looking for or what they want or what they consider to be significant, there's quite a bit of effort made towards papering over those differences.

PH: Yes.

Q: Now, on a very personal level, so your parents, one was Jewish, one was not. You say they suffered some level of discrimination or whatever as a result of that and that's kind of informed you. In what sense, and do you think, if you take that to the level of your marriage to Julian, that there is any of that in that as well; are there parallels?

PH: Sure. I think that both of their families disapproved. My father's family was bigger so there were more of them to disapprove and my parents ended up getting divorced, although I think that, for many years, they had a good marriage but when they divorced after about 25 years, or 26 years, and my father called his sister to tell her they were getting divorced, the first thing she said was, 'I told you you never should have married a Shiksa.' So it was always there and my parents, they always felt that. Then I think there were issues about... there was a time, and I don't know that it's really, that it was true, but somebody made a famous or infamous pronouncement that Minneapolis was the most anti-Semitic city in the country and, as I say, I don't know that that's true. I know that it was the home of the Jewish mafia and that could have influenced attitudes towards Jews generally, but I know that my parents talked about not being able to live anywhere that they... there were places that they could not live or could not buy a home when they bought their first home in the late forties, right after the war, in which of course my father had served heroically. So I think the discrimination that they felt when they knew about, coupled with my father's military service, made it that much more enraging and, of course, there's a real parallel with that and the black civil rights movement because it was, as you no doubt know, black soldiers coming back from the war, that they had just fought against fascism and then having fewer rights at home than they had had in other countries abroad, and saying there's something wrong with this picture. So the early soldiers in the civil rights army had been in the United States military.

Q: Absolutely. They came home and some were lynched, they were beat up. This is documented stuff, it's extraordinary, absolutely extraordinary.

PH: Yes.

Q: But even when I was growing up in... when my parents moved so I would have been 16, so that would have been 1968, I can remember them whispering in certain areas and later it turned out they were wondering if it was an area of Wilmette that didn't want Jews living there.

PH: Yes.

Q: So even then that was going on. I can remember everybody talked about Senator Percy living in Kenilworth and I think there was one Jew and one Black, if that then, living there. It was restricted. The country clubs were restricted.

PH: Yes.

Q: So you now go ahead and you end up marrying someone who's Black, let alone Jewish or not Jewish or whatever; how does that play out?

PH: Well, I think, as I say, from the beginning I was aware of, although not really during the early years of the movement when I was pretty much oblivious and not very political all through college, which now I look back and that seems so odd but that's how it was. But once I turned onto it, then civil rights was always my major focus. I can remember having discussions because, of course, when I gained my political consciousness, women's consciousness raising was also coming into the forefront and I can remember having conversations with women friends about how it wasn't the same, that there were certainly parallels between gender discrimination and race discrimination but race discrimination was worse, and they shouldn't be conflated into the same kind of phenomenon and then I met Julian kind of in the middle of all of this. I met him 20 years before we got married. So he certainly was an influence in how I thought about all of this and in my career. I mean he was an influence even in my decision to go to law school. So my parents, even when our relationship was illicit, if you will, my parents knew all about it and I think my father had more concerns about it and they were always expressed in, I don't want you to be victimized by the disdain with which some people hold interracial relationships, blah-blah. But I never was sure whether that was really just because he would prefer that I not be with a black man. I mean he never really said it but my mother never came close to disapproving it on any level.

Q: What, she accepted it entirely, she was quite comfortable with it?

PH: Yes.

Q: Do you see yourselves, you and Julian, did you see yourselves, knowing the speech that he had made and how significant he thought it was, he leant that speech, as it were, to that book I told you about which is where I first read it.

PH: Yes.

Q: Clearly he was convinced...

PH: So it was the whole speech?

Q: I don't think it was the whole speech but it was a long thing, I haven't read all of it because I've got so much primary material coming in now, you have no idea. I can get the

book actually, it's around the corner but I guess what I'm asking is do you see yourselves on some level as the embodiment of that bi-racial... I mean it's been called an alliance, a bi-racial coalition, you talked about a special relationship, how would you...

PH: Yes. Well, I don't think so because I don't think Julian ever thought of me really as Jewish.

Q: Well, you were a bit ambivalent when I met you. Your friends said, 'Yes, she is.'

PH: I know, and we used to always laugh because at the NAACP Convention, they open every session with an invocation and when Julian became chair, the chair always has the opening speech on Sunday night and they always had a rabbi, and no one ever said it but we knew that it was because of me. So Julian always got a kick out of that. So there were things like that. I mean he would have been happy had I been Jewish but I think he didn't really think of me that way because, to some extent, I don't think of me that way and the religion was not a part of our lives; his even less than mine because I went to church more as a child and a young teenager than he ever did.

Q: Right, but culturally you see yourself as a Jew or no? Because we've just been through this, I don't want to misrepresent this because we were talking about...

PH: Do I see myself...

Q: Yes, culturally.

PH: Well, I guess certainly a little bit. I mean I've always been proud of my Jewish heritage so I guess yes, but I am sensitive to the fact that so many Jews themselves would not see me as Jewish.

Q: Oh well...

PH: It's probably why I have just kind of been used to not seeing myself that way.

Q: Oh, how interesting because I guess I personally have never... I don't think I believe in God, I'm an agnostic, possibly an atheist. I do go to synagogue on occasion but again it's all cultural, it's all about my family, it's all about my father. I wasn't raised in a kosher home, my parents didn't go... they were High Holiday Jews but there was an identification, very strongly. I was raised as a Jew. I consider myself a Jew. But I've never been uncomfortable with the fact or seen the fact that I don't believe in God as somehow prohibiting me from my sense of being a Jew.

PH: As an impediment.

Q: No, I don't because the day God whispers in my ear...

PH: Yes, right and you notice like I didn't change my name and it's hard not to know that somebody named Horowitz, that some Jew gave her that name.

Q: Yes, that would be the case. Let me ask you this...

PH: It would be a big clue!

Q: A big clue. I actually have a line of that, I'll send you something I wrote about their names, their this, their that, that marked them out. Do you think though that... you talked about your parents, do you think this marginalization that Jews suffered, experienced, as Blacks did, they were marginalized people within American society, do you think that sense of marginalization is also what drew them together on some level? I realize that it was never equal.

PH: Yes, I think it still does.

Q: Really?

PH: It still does.

Q: In what way?

PH: Well, I think it's still the case that blacks and Jews vote more alike than any other subsets in the United States. I think even people like Rosenwald, there are a lot of black people around who went to Rosenwald schools and their descendants know about Rosenwald and the role he played, particularly among Southern blacks. So I think it definitely still resonates today and the marginalization is part of it.

Q: Do you think that recognizing the disproportionate involvement of Jews, especially or specifically in this case, Jewish lawyers in the civil rights movement, do you believe that their involvement was crucial to the achievements of civil rights? Do you think that things would have moved as quickly as they did? I know some would argue that they didn't move very quickly at all, that the same achievements would have taken place in the same way had there not been the involvement of Jewish lawyers specifically?

PH: Probably not. I think their role was key.

Q: How?

PH: They had, as I said, help because at the time there were judges positioned, not just on the Supreme Court but the Fifth Circuit, which was really even more important in a way because not all the cases get to the Supreme Court, that were receptive to their arguments but obviously the lawyers had to bring the cases. So I think it was a symbiotic relationship in which the Jewish lawyers definitely were a key component.

Q: It was interesting. As I look at the, I think it was the Lawyers Defense Committee, I got from the American Jewish Committee the names of a lot of the lawyers who went South and law students and also from someone who wrote something for the 1995 reunion of that group, and he says, this man, who I've now been in touch with and has very kindly given

me all of his interviews that he did, which some of them are fascinating people. I haven't been able to read them yet, there are zillions of them. And he said, I don't see a link and I looked and I thought, well, more than fifty per cent of the people you've interviewed are Jews and lawyers, and if you look at the people who put it together, out of the eleven, six are either individual Jews or within Jewish organizations, whether it be Wulf at the ACLU, Greenberg at the LDF: it was quite extraordinary.

PH: Right.

Q: So you've got to sort of think at that level that kind of has to be the case.

PH: Yes.

Q: There are some people now, and I know you think highly of Mack, who have suggested that *Brown* has become... *Brown* should be less celebrated and that it represents what he calls this liberal legal framework that needs to be jettisoned. What do you think about that as a civil rights lawyer?

PH: I think that's wrong. Julian also has in the files a really good speech on *Brown* but I think *Brown* was a pivotal moment, not just as a legal matter and as a landmark case but I think it was a liberation moment for black people, and I don't quite understand... so I would not jettison any part of it.

Q: It is interesting. Risa Goluboff is amongst those and there are some others, Mike Meltsner, has given me a bunch of names and something he wants me to read but he is very much saying what you're saying – it's not just about the landmark legal decision, it's about what it represented to Black people but also to non-Black people.

PH: Yes.

Q: One of the arguments they make is, oh well, you know, it took so long to implement it, it never kind of did. Another argument is that it created a backlash and the backlash that it created made it almost worse and that it stopped civil rights lawyering or it stopped... there was too much emphasis on litigation. What do you think of those arguments?

PH: I could take them one by one and say I don't agree with any of them. I don't think there can ever be too much litigation as long as you're winning the cases and it's not a matter of you litigate or you organize, you do both. The civil rights movement was always a three-pronged strategy of litigation, legislation and mobilization and I think you need all three. I think that the idea that there is a backlash is really baloney. It's like the people who say that you don't want affirmative action because it stigmatizes black people, as if they were never stigmatized before affirmative action. What was the first thing?



Q: Well, there are so many things they take issue with. Her thing is that a lot of the emphasis, especially with the DOJ, used to be economically oriented

PH: Right.

Q: And the NAACP I think at one time represented sharecroppers, and those sorts of cases were dropped but then you sort of sit there and think... it's almost as if it all became too race-based.

PH: Yes but see, if it had... there's no question that *Brown* worked during the very short period of time, ironically under Richard Nixon, when it was actually enforced at both the executive level and the judicial level of government, and had we... had then the forces not combined and the Supreme Court especially not refused to, in effect, enforce *Brown*, I think you'd have a very different situation today. I think education is key to the future and black and white kids going to school together is key to race relations, and that is not the fault of *Brown* as a decision or certainly not the fault of the lawyers who heroically struggled to get us *Brown*.

Q: So clearly, as one goes forward, I think in my opinion, the worse thing about those who are so negative is that they don't seem to be able to replace it with anything else, a new kind of framework and, as you say, they seem to suggest that everything is mutually exclusive in some way. How can you divorce poverty and race and ethnicity? How can you divorce the idea of, as you say, it was a three-pronged strategy, mobilization and litigation? I mean even the sit-ins, in a way, and you look at the strategy there in terms of okay, you've got young people wanting to sit-in and take to the streets, they're happy to remain in jail and, on the other hand, if they don't get out of jail, how are they going to go back onto the streets? Jack Greenberg has a chapter, it's 'Out of the Courts and Into the Streets.' I would say out of the courts, into the streets and back into the courts to get them back onto the streets. I don't see them as mutually exclusive or separate. I think they are necessary to one another, surely because also, what happens when you don't... that was, it sounded like... you can tell me as a lawyer, one of the biggest problems they were having in bringing these cases, whether it be trespass this or that, was trying to use the law as a way of setting precedent and some of the courts really wanted to take it case by case and seemed very wary of actually using the case, the decisions to set precedent. Is that a way of reading it or am I wrong?

PH: Yes, I think that's not wrong. Sometimes it's because they're constrained by some Supreme Court ruling and really the Supreme Court is the only one that can set a national precedent.

Q: But it seems like that's what they were trying to do, reading some of these people, that they wanted to try... not the people who are doing down *Brown* but the people who were going South actually wanted to get cases kicked up as far as they could.

PH: Yes.

Q: With the idea of setting a precedent.

PH: Oh yes.

Q: Sorry, I haven't said this right and that was the...

PH: Yes, then they did because they had a receptive Supreme Court. Now the strategy is just the opposite, they don't want to be in the Supreme Court.

Q: Was that a valid strategy? Was that a strategy that they used, they wanted to get stuff kicked up?

PH: Yes.

Q: Can you explain to me just how that worked a bit and the make-up of the court being crucial or instrumental to setting precedent because again people keep saying about these other... it seems it's the legal academics, the historians, who haven't actually practiced themselves that seem bent on ripping some of this to shreds without replacing it with something.

PH: Yes, well, that's typical.

Q: Says the lawyer.

PH: Well, there are District Courts at the Federal level and there are Appellate Courts and there are only eleven of them, and there used to be ten but then they broke the Fifth Circuit into two and so it was really in the heyday of civil rights litigation, the Fifth Circuit was just this fabulously impressive court. I don't know if you've seen a book by Jack Bass?

Q: No.

PH: I'd recommend it. He's still alive and well, but this is a book, and it might be called *Black*, something *Justice* but it's about the Fifth Circuit, to which Frank Johnson was elevated and Frank Johnson was the incredible District Court Judge in Montgomery who decided all the Southern Poverty Law Center cases, and including all of mine and a Republican appointee to the court, and how these judges on the Fifth Circuit did as much to advance the cause of civil rights as anyone else in the country. So what happens is a Circuit Court sets precedent just for that circuit and the fact that there are conflicts between and among the circuits is usually a reason that the Supreme Court takes a case. It's unusual for the court not... for the court to take a case where there's not a conflict between or among circuits but sometimes there's some kind of... well, in the case of *Brown*, that's a

perfect example. They had to overturn *Plessy* which was an 1894 decision and no Circuit Court has the power to do that; only the Supreme Court can overrule Supreme Court precedent and thereby set precedent nationally.

Q: Okay. A little bit, if you don't mind, on Julian's case and experience because it seems to me that as I look at ... let me ask you this, how would you define civil rights, and do you see the civil rights movement... or do you see A civil rights movement, depending upon how you define civil rights, as a longer... if not a longer movement, within a longer period that stretches perhaps from workers' rights in the thirties, union organization, lawyers involvement at that point going right through the seventies and now?

PH: Yes, I see it as even earlier, I mean really from reconstruction, that there's always been a civil rights movement. Sometimes we refer to the sixties movement or to the modern civil rights movement but there's always been a movement and there certainly is now, because I define the civil rights movement as the struggle for black freedom and that's been ongoing since before the Civil War but certainly since reconstruction.

Q: But as someone, for instance, who took on gender cases, and the cases that I'm talking about, workers' rights, which would have included all workers, not just black workers, although black workers would have been a big part of that because of discrimination before unions and even within unions, is it not larger than just justice for blacks, the struggle for black freedom, even if that's the most... no?

PH: No, not for me.

Q: Really?

PH: I mean I see that as part of a larger social justice movement but I think the women's movement is separate from the civil rights movement, is separate from the gay rights movement, although using it as an umbrella term, I think they're the same and Julian was one of the first people to talk about gay rights or civil rights, in the sense that there are certain rights to which we are all entitled. But when I think about civil rights, I think about black rights.

Q: Okay. I'm looking at in a way as more than that but what I am seeing is that many of the...

PH: That's fine, I don't object to that. I personally think about... and I don't like some of the comparisons. Like I said at the beginning, I think that there were always parallels between the women's movement and the black rights movement but that they were never the same.

Q: See, I'm being very specific in that. I am not trying to compare them, in that I don't think you can possibly compare gender and equality or what I have experienced as a woman. Somebody said to me, this was when Obama was running, don't you think you should vote for Hillary Clinton? And I said, 1) I don't think I should vote for anyone I don't particularly support. 2) I would much rather see a Black man who is capable elected President of the United States than a woman, to be perfectly honest.

PH: Right.

Q: I think it absolutely much more significant, no question but when I talked to... when I think of rights and I think of myself as American, I think of rights in a much larger way, legally in terms of what the Constitution protects or doesn't protect and has a duty to, a responsibility to.

PH: Right.

Q: I guess that's the distinction in my head.

PH: Absolutely in that sense, yes. They're rights, period.

Q: So because I'm looking at this, I'm looking at all these people who have FBI files. I mean, crikey, and a lot of them, the people who have FBI files are Jews because a lot of them were either socialists or they were communists and even when they weren't, the idea that they simply would have litigated on behalf of or attended a conference was enough to get the FBI onto them. How much of that was still an issue back... in some ways, it was still an issue, wasn't it, when Julian's case was being brought in terms of the lawyers?

PH: Yes.

Q: Can you talk about that because that's certainly something I'm going to deal with?

PH: Well, the whole period of commies and the 'Red' scare and all of that is an unhappy chapter in American history in a lot of ways, and many years after the fact, there was some memo discovered in a file somewhere about how the ACLU had, in fact, cooperated with the government in finding communists and everybody, by the time this was publicized, being appalled at the idea that the ACLU would do this, but it just showed how gripped the nation was by this fear. So in the sixties when Julian first opposed...when SNCC and Julian as its communications director first issued their statement against the war in Viet Nam, it was seen not just by those who favored the war as politically wrong-headed but really as treasonous. So then when Julian compounded this perception by hiring Rabinowitz and Boudin, I think that there are still people who, and certainly when Julian ran for Congress in 1986, white people, not black people because he carried the black vote but white people who still, if you asked them their impression of Julian Bond, would say

that he was not a loyal American. So he had, in the meantime been represented by Chuck Morgan who at the time was the head of the southern regional office of the ACLU, based in Atlanta. He and Julian already knew each other and it was a logical thing... Chuck handled major, major cases during that time and so it was a logical thing for him to be involved in Julian's case. But then when Julian also asked Rabinowitz and Boudin to be involved, the ACLU told Chuck that he could no longer represent Julian and be involved in the case and he pulled out.

Q: When was he your law partner though, after that?

PH: Yes, after.

Q: So you forgave him.

PH: Yes, many years...He actually then left the ACLU eventually and started his own firm in Washington but he had, in the meantime, become the Director of the National Legislative Office of the ACLU based in DC, left that job in 1976 and started his own law firm which I joined in 1978.

Q: It seems rather extraordinary that the ACLU, the American Civil Liberties Union, although based on what you said that they... do we know that they'd cooperated or had they allegedly cooperated with finding...

PH: No, I think we know. I think there was a letter that was authenticated and it was signed by the then Director of the ACLU. No, we know that.

Q: Okay, I should contact the ACLU then and get ahold of that. So it seems really quite amazing that in America so either scared or so potentially in control were certain types of people, that you would have actually had a civil liberties organization which was also heavily Jewish basically...

PH: Succumb.

Q: Succumb is one way of putting it, but to not be doing what... not protecting rights, not protecting people's rights, in fact.

PH: Yes.

Q: In fact, doing exactly the opposite.

PH: Right, but it was always, as I say, an issue that was certainly alive and well in the sixties and the civil rights movement was constantly Red-baited. And look at Martin Luther King and Stanley Levison.

Q: All of them. They all have... I have Kinoy's FBI record. Mike Meltsner said over at LDF they used to joke about how they would say, so who do we have listening in today? And he said I'm not sure they weren't always listening or they weren't listening but there

was a belief that certainly somebody might well be listening in and he was certainly part of someone else's FBI records.

PH: But Stanley Levison, he had been involved with the Communist Party and so that was... because Hoover's FBI knew that, that was one of the things with which they really tormented King and that was why King severed his relationship with Stanley Levison.

Q: But he wasn't actually a member. He wasn't a card carrying communist, I don't believe, Levison. I think he did a lot of fundraising for...

had there not been the LDF, had there not been this civil / legal framework, what would have happened? That's a kind of good question actually.

PH: Yes, interesting and I think today you have so many more coalitions, and the gay rights movement would never have moved as quickly and powerfully without the civil rights movement and they've taken lots of their cues from it. So it builds the coalition. Certainly immigrants and there are conflicts and pressures between black and brown but it's more what unites them, I think, than divides them. So this whole business of our becoming a minority / majority society is going to make the whole question of civil rights more important than ever.

Q: Unless there's anything else you can think of at this point, if I could come back to you at some point if I need to, that would be great.

PH: Yes, and by all means if you have any follow up questions, just let me know.

Q: I am so grateful, and did I tell you that I heard from your friend at the library, from Edward?

PH: Yes, so you spoke to him.

Q: Yes, he sent me all kinds of stuff. He found the speeches which I've got to read. He sent me all the Supreme Court stuff. I'm going to see if there's anything else I think he might have but he and I had a very good talk, he is a very funny guy. So that was very useful.

PH: I was just saying that I'm glad that you were able to talk to Edward and that he was helpful because the materials should be useful to you.

Q: Absolutely terrific. The whole thing is coming together. I'll send you what my intro is and what I'm sending for my intent and I think you'll be pleased with it because a lot of what I believe in my ignorance has been confirmed to me in your experience.

PH: Oh, great.

**Recording ends 64:54 minutes**

## **Appendix 5: Interview with Joe Levin, Lawyer and Co-founder of the Southern Poverty Law Center**

20 July 2016

Recorded Phone Interview

JL: “I grew up in an entirely segregated environment in Montgomery. “

[It was] “Entirely Jim Crow. I was pretty much sheltered, or at least my parents made every effort to shelter me from the civil rights movement which of course was prominent here in Montgomery, in the 50s, in particular. That was essentially where I grew up and the circumstances in which I grew up. “

“The high school I went to [was] an entirely all-white high school. The same all white high school my law partner to be Morris Dees went to. And then off to the all-white University of Alabama in 1960. And... “I was a racist. I had the same attitudes of the white population of Montgomery and the South and I’m also, interestingly, I’m sure the Jewish community here. Whether it was the reform community, the conservative community or the Sephardic community, unity. There were three congregations at the time, all very racist in their beliefs. There’d been two rabbis over many decades, who tried to support civil rights and they were both booted out, one in the 30s and one in the early 50s.

Q: Why? do you think that was. Was it racism or the fear of consequences of being seen to be pro civil rights?

JL: “It was all of the above. The community was racist. The community wanted assimilation, was its primary goal in terms of how it fit with the rest of the community and a lot of it would have had to do with concern as not being seen as anyone, back then I think we would have called it, an “integrationist.” Or if I were to use some of the language of the day, the term, ah, and I’ll use the ‘n’ word the term “n’ lover would have been thrown around a lot.”

Q: Tell me a little about... you come from a very interesting background.

JL: My father or daddy was raised in Newport News, Va. My grandmother and grandfather originated in Phil. but families came from Odessa, Ukraine. (Grandfather may have been born in Ukraine.) Father graduated law school in 1934. Mother's family came in 18th century Otto from Germany. Become Hutto. From S Carolina to North Alabama. My great grandfather, John C. Hutto was a major in the Confederate Army, There's a Sons of Confederate Veterans Camp in Walker County Ala named after him. My mom was raised on a farm in Walker County. My mother moves to Montgomery. She converted to Judaism. "

Q: Your Dad was a lawyer, a practicing Jew?

JL: "I was put into Sunday school until I was confirmed. "

Q: Clearly his Judaism was important enough to him for him to have your mother convert and you to be sent to Sunday school? You had a Jewish identity.

JL: He was not a religious person but he identified strongly with the Jewish community.

Q: And how would you describe yourself?

JL I'm currently a member of Temple Beth Or. Spent 20 yrs in D.C. and wasn't identified with a temple. My youngest daughter went to a synagogue for several years. I've been married four times. My first wife was not Jewish and we were divorced before my kids had a chance to identify with any religion. My second wife was Jewish and my youngest daughter is our child and she had some Jewish identity growing up. Third not and didn't last long. My fourth marriage, my wife has always been a member of a congregation and her kids, two boys were Bar Mitzvahed. "There's a lot of Judaism floating around in the family"

Q: Would you describe your, do you think your parents were racist and you were raised as a racist. Did you hate Blacks? Did you think they were less than whatever?

JL: "No I did not hate blacks. My parents, again, when you say someone's a racist. They were never racist in the sense that they used racist terminology. They were racist in the



sense that they deeply believed in the segregation of the races and that was their existence. They both grew up that way, and it, they and I do know that the civil rights movement was disturbing to their way of life. And they would have preferred to do without it. That was...that was the pretty much the Jewish, the Montgomery Jewish approach, and pretty much the same in the deep South. Two, one of the people, the woman other than my mother who raised me, Sadie McDaniel, who was like a second mother to me, but there was that, I mean she was “the help”. And while my parents loved her, and I loved her, ah, there’s always that element of master and slave to use kind of, not a great metaphor, but you get the point.” That was always there. So the answer to your, there is no simple answer.”

“Was it a racist environment, yes. were my parents openly racist. No.”

Q: You grew up in a household where had parents who believed in the segregation of the races, who were disturbed by the civil rights movement, ah, how, and it appears that is something you accepted, didn’t rail against. What led you to civil rights lawyering? Was there an epiphany? You are co- founder of the Southern Poverty Law Center.

JL: When I went to the U of Ala it was all white. in about 1962 I was in ZBT, a Jewish fraternity for Southern Reform Jews, across the street there was Kappa Nu for southern conservative Jews and there was one other Jewish fraternity, Phi Epsilon Pi or the Sammy fraternity, and it was for Yankee Jews. One of my fraternity brothers was a guy named Melvin Meyer. Melvin was from Mississippi. Good guy, good friend. And Melvin, in I think it was my sophomore or junior year, so ‘62 or ‘63 Melvin who was the editor of the school newspaper the *Crimson White*, wrote an article, commentary on the desegregation of the University of Mississippi. And he supported what we called the integration of the University of Mississippi by James Meredith. Well, Melvin, so that got published in the *Crimson White* during that time. We all lived in the fraternity house, Melvin didn’t. I think Melvin lived in an apartment off campus at the time but most of us lived in the house and I remember there just being a barrage of telephone calls and insults, anti-Semitic stuff comin’ to the house over the telephone and then one night about 2:30 in the morning, waking up to a ten foot cross being burned on the front lawn of the ZBT house. All of this as a consequence of what Melvin had done. And it was, it was I don’t remember being afraid. I remember being pissed off because it was disrupting my life. I mean I was

interested in partying and Alabama football, right? Bear Bryant had been the coach there since about 1958. It was a big deal. ALA was winning national championships, with this all white team, I should point out, in the early 60s and so Melvin had done something that had completely disrupted my life. The cross was burned, we later discovered by something called the United Klans of America, which had its HQ in Tuscaloosa, which, incidentally, several decades later, we sued for being responsible for the lynching of a black man in the early '80s in Mobile and won a seven million dollars verdict and took all their property and sold it and gave the several hundred thousand dollars we were able to get for it to the young man's mother. To get me back to Melvin. I was pissed at Melvin because he was the one disrupting my life. I'd come back to Montgomery. People in the Jewish community, I remember going off to the Standard Club here which was the Jewish county club, because Jews couldn't belong to the other clubs. It had once been a segregated club itself, in the sense that conservatives couldn't belong. That changed after WWII. So I'd come back and I'd hear these people at the club would say, why in the hell do you let this guy stay in your fraternity, and blah blah blah, and I'm like holy shit. I don't need this. So I was pissed at Melvin for a while. But as things unfold and within a year or so I just started changing my attitude about those issues. Felt differently about it. You had not exactly the assassination of John Kennedy, which at the time didn't disturb me too much. I was a Richard Nixon supporter, that's where all the Southerners I knew were. But then all of that just sort of fell into place and I had to sit down and actually think about what my position was on issues like this and Melvin was, that was really the crucible for making me stop and think about issues of race. And that's where it started. That was the biggest event. The second biggest event was actually going into the army in 1967. And for the first time in my life, being in an environment where I had colleagues who were black, I had, even some senior officers, senior to me, I was a lieutenant, who were black. I saw and I just colleagues, in the army who were black and race, all of the sudden to me, became, ah, an issue that not only could I think about it, because I was confronted with it, and I don't mean confrontation in a bad way. I mean it was just there. Part of my life. I began to think, these people are just like I am. They had the same concerns, the same issues, ah, and except for the fact that most of them were raised in environments just like I was except they were in the black environment. By the time I got out of the army in '69, I had developed an entirely different view of civil rights issues and how important they were."

Q: So unlike those I've read about your coming to this was very different. At any point, you said you were angry when the cross was burnt because it disrupted your life, did you ever stop to think you were being treated like blacks?

JL: That's exactly right. Even though I'd grown up in this segregated in the sense of Christian vs Jew environment in Montgomery I had never really experienced anything directly that was anti-Semitic growing up. Now, I am sure that there were some girls that I dated who were not Jewish whose parents probably would have preferred that their daughter not be dating a Jewish guy. I know that my younger brother had some of those issues pop up when he was in high school. The truth is the only direct anti-Semitic thing I can remember as a kid in high school. I was going through the line. I was signing up for ROTC, probably my senior or junior year, I don't know. Some sergeant who was taking our names and getting our information down when he saw my name, he says, what store does your daddy own? And it took me awhile, I think what the hell is he talking about, and it wasn't until I walked away and started thinking about it that that was an anti-Semitic comment." That's the only thing I experienced like this. So when all this unfolded with Melvin, and all my friends, even though I went to temple, and everything this was a very multi-religious environment in Montgomery. Multi-religious meaning that, different elements of Christianity whether it was Catholicism, Protestants and Jews, the kids were all together there was very little division for me growing up there. I saw this with Melvin, and yeah, I had to stop and think about, wait a minute. "This is the kind of crap that black people have to put up with all the time and I'm sitting here thinking about my life is wrong somehow, my white existence is being disrupted because of this cross in the yard. Think about what these people put up with everyday. Plus, I did over this course of time have a chance to talk to Melvin. I just absorbed what was said and that was when my attitude really began to change. I just knew I was on the wrong side of the fence."

Q: But being on the wrong side of the fence doesn't necessarily, why civil rights lawyering?

JL: I get back to Montgomery. The plan was always for me to go into practice with my father. That was the plan. His plan and mine. More his than mine. In fact I went to law school but I was never that enthusiastic about it, it was just you gotta do something when you go out in the world. So I came back he had a commercial practice. It didn't interest me

that much. I enjoyed going into court. But pretty soon after I got back I met Morris Dees, he was a good friend. He was the older brother of a good friend of mine. I was at a party early in '69 and, over at Allen's house, his brother and I started to talking to Morris, and... Morris was a lawyer, he had practiced law in Montgomery, he and his law partner Millard Fuller had started a publishing company here. Very successful. Times Mirror had bought it out and he had started doing some civil rights litigation. But just by himself on the side. We started talking about that. And it interested me. And we started talking about the Ala legislature that was, I think there was one black representative in the entire Ala legislature at the time and we started talking about was there any kind of litigation that we could do and he had been looking into the issue of whether if we got rid of all the multi member districts, if we could get the court to rule them unconstitutional because they're discriminating against black voters, maybe we could do something, and there was some guy who had filed a case in Indiana seeking the same kind of remedy, and was so far successful in his case. So Morris said we ought to go up and see him. So we got on an airplane that night and flew to Indianapolis and met with this guy the next day. It was bizarre.

Q: Amazing.

JL: Yes, it was bizarre. I'd had a couple of drinks so it was easy to do and we decided we wanted to bring that case. Well, long story short, there were other cases that we had a common interest in and we both wanted to do civil rights work. So Morris got out of his contract with Times Mirror, his partner who was a guy named Millard Fuller, Millard was the guy who started Habitat for Humanity, which you're probably familiar with.

Q: No, I'm not but let me ask you something. You've got a non-Jew and a Jew who grew up in the segregated South.

JL: Correct.

Q: Dees has got his thing going but yours is a totally different thing, as you come to it. Let me ask you this, do you think that, we were talking about this the other day. Do you think that there was a disproportionate involvement of Jews and Jewish lawyers specifically in the civil rights movement? And why, if you do believe that to be the case, do you think that is?

JL: Do I think? The Jewish lawyers that I knew early on in the civil rights movement were primarily lawyers who... there were some who were easterners or from the far west,

California. They were people who were affiliated in some way with the NAACP Legal Defense Fund, which was the litigating arm of the NAACP out of New York, or they were affiliated with the American Civil Liberties Union out of New York, or they were people like the late Chuck Morgan who I knew well, who had basically been run out of Birmingham. Chuck was not Jewish. So most of these people I know were Jewish. Chuck ran the southern regional office of the ACLU for a number of years and then ran their Washington office, but the people I saw in the South who were doing this work, if I had to stop and think okay, how many Jewish folks did you know, it was lawyers, who were doing this kind of work who were from the South, it was very small. Right now, if I'm thinking back to that day late sixties, early seventies when we were starting the center, I can think of one and he was a law clerk to Judge Frank M. Johnson Jr., a very famous U.S. District Judge here in Montgomery, who decided all kinds of cases that were of huge importance to the civil rights movement, and he was from Montgomery, a guy named Bobby Segal. There was another law clerk there named Howard Mandell who stayed in Montgomery and, long story, did personal injury work and did civil rights work.

Q: So basically your experience of Jewish lawyers in the civil rights movement were people who were coming in from outside of the South.

JL: Yes.

Q: As opposed to there was maybe a handful of lawyers that you came in contact with who were Southerners who were also Jewish and involved in the movement.

JL: Yes, that's pretty much true. We were in a... Alabama this is really the deep South so this is a fairly isolated part of the world and although it has this huge civil rights history, it's not like people were flooding down here in the late sixties / early seventies to file lawsuits, and you have to remember as well that the dominant issue of the time, which is the thing that was driving Dr King nuts, really despite some of the things that Lyndon Johnson did with the Voting Rights Act and the Civil Rights Act, despite all of that, the dominant issue was Viet Nam, and that's where so much of the energy of the country of people who would normally be involved in the civil rights issues, so much of their energy went. It went into issues related to the Viet Nam War.

Q: Let me ask you this. First of all, lawyers, how would you describe a civil rights lawyer? Do you know what I mean by that?

JL: Yes, that's a difficult description and I'll tell you why. A civil rights lawyer obviously would be someone who does that kind of work exclusively, maybe as a... and it depends on when you're talking about. Remember before 1975, it was extraordinarily difficult for a lawyer in private practice to do civil rights work because there were no attorney's fees available. It wasn't until 1975 that Congress passed legislation that allowed for the awarding of attorney's fees in successful federal civil rights litigation. So there wasn't any money there, which is one of the reasons that Morris and I had to start the center. We couldn't support our private practice in the civil rights work we were doing. So people in that early time, the late sixties into the mid-seventies, the definition of a civil rights lawyer typically was going to be somebody who was working for an organization like the ACLU or the NAACP Legal Defense and Education Fund, those kind of folks who were being paid by the non-profit because there was no other way to be a civil rights lawyer. Although historically, there were large law firms, mainly out of the big cities: Chicago, New York, who did pro bono work and let some of their younger lawyers and others do the civil rights work for which there were no fees available. So you say, what is a civil rights lawyer? It's somebody I guess who believes in civil rights issues and litigates those to some degree but it's complicated.

Q: I understand what you're saying about there being no money in it. In fact, I think I have a line in what I've written so far where I'm saying these guys did whatever without bread and butter, but what I'm sort of getting at is there's a whole idea of the lawyer as a social engineer, the lawyer identifying with his or her clients. Is there something different about the civil rights lawyer as opposed to somebody who's dealing with corporate law, for instance, and should a lawyer be a social engineer? Does the law lend itself towards that kind of lawyering?

JL: Oh, absolutely. Should a lawyer be that? Well, a lawyer should be whatever a lawyer wants to be but the idea of advancing the rights of groups that are otherwise not treated fairly in our democracy is, that's something that should be inherent in the law. It is inherent in the law of the, at least my interpretation of the law because we're supposedly a country of equal justice, equal rights. So whether we're talking about voting rights or

we're talking about free speech, those are all civil rights that every lawyer should be concerned about. We study that in law school. That doesn't mean that you go on to be a civil rights lawyer. You might go on to be a tax lawyer or someone who deals with wills and estates. There are so many. Or you might go into commercial real estate law. There's a variety of stuff that can be done but at its root, when you're going through these courses in law school, so much of it has to do beyond having a course that is related to constitutional law. The country is supposed to be a democracy and equality is the big deal of a democracy, I think. So I don't know if that answers your question.

Q: I think it does but one of the things that's concerned me is there are these so-called new historians, they like to think of themselves as new historians and they tend to be very critical of the NAACP and LDF for what they say was pursuing an agenda of a race-based civil rights agenda, a litigation agenda as opposed to, let's say, an economically oriented agenda, especially post-*Brown*. They suggest that *Brown* should not be celebrated. That *Brown*, in fact, was an impediment towards the civil rights movement going forward in a much broader sense. Are you familiar with those people and what do you think about it? For instance, a guy named Kenneth Mack, a Black professor of law at Harvard thinks that the liberal legal framework, as he puts it, should be thrown out and discarded on the dust heap of history.

JL: Well, I understand that argument, I'm not that familiar with it but I understand it. If you were to ask me as a pragmatic matter what was the result of *Brown vs. Board of Education*, I could easily make the argument well, what happened was that all of the school systems, certainly in the South, that were affected by *Brown vs. Board of Education*, which by the way took more than two decades to even begin to have any serious effect, the school systems that were to be, to use the term, then racially integrated through busing or whatever means in subsequent years, what it did was it drove the whites out of the public school system. They just left. They went to church-based private schools, some of which were, and remain, really crappy schools. Others like this one here in Montgomery called Montgomery Academy which is a really high-end school. Keep in mind I went to a high school in Montgomery, the Lanier High School which was all white and which was the equivalent of any fine academy that you'd ever find because guess what, us white folks were privileged. So I understand where he's... I think where he's coming from if we talk about specific issues, that things did not work out as well as they

might have, but it's very easy to look back on history and say well, if you hadn't fought for the rights of African-Americans to have the same public education that white kids had, you would be much better off. The logic of that escapes me. Well, maybe you would have been and exactly how would you have... you talk about somehow changing the economy in a way that would have been more beneficial to the black community over time. Okay, show me exactly how you would have done that? If you had a school system that remained, if the NAACP had stayed away from *Brown vs. Board of Education*, if you had a school system that had remained totally racially segregated in the deep South, what process would you have engaged in order to bring economic balance with the white and black communities in this country? I don't get the reasoning behind that, quite frankly. I might look at some specific illustrations that this guy has and say, okay I believe that but if you give me a broader picture like *Brown vs. Board of Education* was a bad idea and all these liberal lawsuits, blah-blah-blah – well, you know what, liberal lawsuits got voting rights in place. Liberal lawsuits got rid... the lawsuit that Morris and I brought got rid of the all-white George Wallace's state trooper force. It got rid of the basically all-white Alabama legislature. I mean I'd have to see some very specific stuff to appreciate where these guys are coming from. We have a Constitution and the Constitution gets interpreted by the Supreme Court, and the Supreme Court over the years has been receptive to making sure that equal rights are for everyone and the fact that there remains, as we know from the past several weeks, some strong divisions between the African-American and white communities throughout the United States, trust me, it ain't like it was in the forties and fifties. So things are definitely better and I would attribute a lot of that to the civil rights lawyers who brought cases that needed to be brought.

Q: And let me ask you this, given what we are now facing in America and given these other arguments, and given the fact that we still live in a very divided America on all kinds of levels but a very racialized America, do you believe that the law and lawyers are still key to the pursuit and the protection of civil or citizens' rights and liberties?

JL: Oh absolutely, that's why we have a justice system. That's why we have courts. That's why we have a Supreme Court. When you ask that question, to me it's rhetorical. That's what our Constitution's all about. That's what the Bill of Rights is all about. So it doesn't really... the answer is obviously yes. It's who we are.



Q: Do you think that new strategies are necessary? Talk to me a little bit about the Southern Poverty Law Center. I think it is interesting that it has that name because that obviously means there is an emphasis on the issue of poverty, the issue of economic disparity which obviously all relates to inequality, rights. I mean to me, obviously you can't have things in a vacuum; things work together. There was this argument about... these 'new' historians also talk about the fact that, for instance, the LDF and other organizations were not prepared for the sit-ins, that this was a young generation fed up with what Brown had failed to deliver, and that the LDF was still thinking with this liberal legal mindset and bringing stuff to court and this and that. The other argument obviously is if they didn't get the protesters out of jail, one way or the other, they wouldn't have been able to continue direct action.

JL: Yes, let me on the name of the Southern Poverty Law Center, there's a misperception about that. When we started the center and named it back in 1971, there were actually courses in law schools called poverty law, and it was almost synonymous with civil rights law and that's where the name came from. It's interesting. I had an African-American Jewish group out of D.C. and they were African-Americans and Jews called Operation Understanding D.C., that I was talking to yesterday down at the center, and I was asked that question and I always get asked that question, where did the name Southern Poverty Law Center come from? And they put the emphasis on Southern poverty and I say no, listen, it's poverty law was actually a... it was course work back in the sixties and early seventies. It kind of disappeared, that name went away but we had already called it, we had already named the center and on several occasions over the past forty-five years, we have considered changing the name and the last time we considered, just because people don't relate to it anymore in that way, to something like the justice center or something like that, the last time when I came back to Montgomery in 1996, I was CEO at the center, I think somewhere in 1997 or 1998 we revisited this question of a name change and we just decided, you know, it's our brand, it's not worth it and that was the last time we considered changing it. So the emphasis on poverty is not what you might think.

Q: It's interesting because something you just brought up, you were talking to an African-American Jewish group, what's it called again?

JL: Operation Understanding D.C. It's a group that was started by a Jewish woman named Karen Kalish out of St Louis, Missouri and I knew Karen when I lived in D.C. and she wanted to form this group and she asked me if I would sit on the board and help her put it together, which I happily did and it's been very successful and they come down to the center. It actually mirrored a group that was originally out of Philadelphia called Operation Understanding. Jews and African-American kids, high school kids brought together to try and better understand each other's lives and that's the group I'm talking about and they come down to the center... I guess we started that some time in – I lose track – I'm going to say 1992 and they come down to the center and visit every year, I had about twenty-five or thirty of the kids there yesterday.

Q: Before my thing is due, maybe I'll have to come and be part of this. I was just going to ask you, this is actually very interesting because one of the things I'm doing is situating Black and Jews in this sort of... well, asking the question real or rhetorical, a Black-Jewish alliance? And if you look at the names of the individuals of the group that sent lawyers down to the South for Freedom Summer in 1964, six out of the eleven people who formed this Lawyers Legal Defense Committee were Jews. If you look at the names of those who went and have been interviewed recently for a 1995 reunion, more than half of the names of those who were interviewed by another academic are Jews. Herbert Hill, who headed up labor at NAACP, says there never was an alliance, that's way overdone and we know that Julian Bond wrote a lot about Black-Jewish relations. I've got two of his speeches which, as Pam says, he kept giving over and over and changing slightly as time went on.

JL: Yes.

Q: Is there, was there an alliance because it was said to have gone into decline in the seventies with affirmative action and black militancy and yet you co-founded, along with Morris Dees, this center in 1972.

JL: I never had a sense of a Black-Jewish alliance. I have always felt that Jews have experienced discrimination in their lives, not in the way African-Americans did and I'm talking about American Jews now, but we all know the stories from Europe. We all feel that, our history. So there's a history of discrimination and hate there that I think Jews relate to in a way that other ethnic groups, religious groups might not and in this country I

think that Jews, obviously not all Jews, they certainly didn't here in Montgomery, but that Jews in the broader U.S. felt a connection. Now when you talk about an alliance, do I think of it as an alliance? No. Do I think that the rabbis and the Jewish people who participated in the civil rights movement, particularly of the 1950s, that they showed up for the Selma marches as part of some broader, more organized plan? No, I don't. But the connection is a certain sense of understanding and appreciation for what discrimination means. But I would never want to equate, at least for American Jews, what we feel or appreciate to what African-Americans went through, and still go through to some extent but for hundreds of years. It's not the same thing.

Q: I would agree with this actually but would you feel more comfortable with, say, bi-racial coalitions that were forged perhaps, certainly informally but between individuals and between organizations, out of both self-interest as well as empathy?

JL: Well, I think that if we're now talking not about history but about how I feel currently about those kinds of organizations, is that what your...

Q: Well, I guess what I'm saying is if you think back to... if look you look at the '30s and '40s and then the '50s and 60s, I see loads of Jewish lawyers at the forefront of labor movements.

JL: Right.

Q: Eugene Cotton, the guy at the UAW. There are a lot of union lawyers for unions, general counsels who, in fact, were Jews. That's partially this whole Red baby diaper thing and then you go into the 60s, which is an overly potentially romanticized period anyway within the civil rights movement.

JL: Sure.

Q: Because the iconography, the films, like you were saying, "The Help," all this sort of thing. But clearly there is something there because there is no question that there is a disproportionate Jewish representation, both usually in the leadership of the unions, never the rank and file, unless you're talking about the garment industry in New York, and then

again in terms of the numbers of students who went from the North to the South in terms of Jewish students and the lawyers. So what I'm suggesting is perhaps, and I don't know if you agree with this, that there was no alliance per se in a formalized sense, but that there was a level of cooperation that existed both at the individual and organization levels; in other words, the Jewish Committee, the World Jewish Congress and the NAACP, the individual lawyers, Jack Greenberg at LDF, you at the Southern Poverty Law Center.

JL: Yes, but again the level of organization that you're talking about, yes, did that exist? I'm not the best historian on this but I think you're correct. I think that did exist if you went to New York or Chicago and you're looking at Jewish lawyers who are, in one way or another, connected with unions or Jewish lawyers who relate... organizations that have similar kinds of civil rights concerns. They see a connection there in some way. Yes, it's true in these but if you come down to the deep South because the issues that you're talking about and working with, and the idea of connecting and now I'm talking about the late '60s and early 70s when we started the center, the idea of connecting with other organizations, and particularly with African-American organizations or Jewish organizations, because I was Jewish or anybody else was Jewish just never would have occurred to me. We worked with – we being Morris and I – the Alabama NAACP to get some stuff done, to get some litigation done. They were our client from time to time in litigation that we brought. So, yes, we worked in that sense but I never saw it as a Jewish-Black relationship. The formal relationships that you're talking about that may have occurred in big cities in the North in an effort to bring about civil rights and to bring civil rights cases and to go after civil rights issues, that didn't really exist down here and it certainly wasn't anything that played a role in what we did.

Q: Tell me about the center, tell me about what it does and the fact...

JL: Yes, I was going to make the point. If you come into the current day and you look at where we've gone from being an organization that was almost completely focused on litigation in the 70s and litigation that had to do with racial issues and sex discrimination. We did a number of landmark sex discrimination cases here. We moved into issues related to hate groups. It started off with the Klan, monitoring them. We had an organization called Klan Watch. When I got back here in 1996, I looked at the main Klan Watch and I thought, good grief, we're monitoring neo-Nazi groups, white supremacist groups of all

sorts, militia groups, we need to be something else. So I changed the name to the Intelligence Project. I could go on. So we've done that, we changed a lot of what, even on the legal end of things, we do a lot more lobbying. We're concerned about legislation in state bodies, state legislatures. At U.S. Congress, we do a lot of testifying for legislative committees all over the country now. So we do things a lot differently now and we work much more closely with other organizations. If you're in the legal end of things, if you're talking about LGBT issues, we work with groups around the country that do that. So there's a huge amount of intergroup cooperation on all of these issues, whether it's LGBT, whether we have an immigrant justice project that works out of Atlanta, we do juvenile justice work in our offices in Jackson, in New Orleans, Miami, we're about to open one in Tallahassee. So we do things a lot differently now and we are much more engaged and working with other organizations, but it's not the kind of connection I think that you started talking about as between Jewish lawyers and maybe Jewish organizations and other groups like the NAACP that occurred back in the fifties and sixties.

Q: Do you think, to some extent, because it is less race-based? It sounds like you are... they talk about the rainbow coalitions back actually in the sixties when it was about... it was starting to become gender stuff and it was the Viet Nam War, it wasn't just about race. Do you think because you are involved beyond a race-based program, that's the reason?

JL: I'm sorry, say that again.

Q: Do you feel yourself to be a less race based organization now in terms of your programs and what you pursue and how you pursue them?

JL: Yes. Racism is a huge issue but we're dealing with issues related to race. We still deal with issues related to sex discrimination. Our LGBT project is overwhelmed with work. What we do on the immigrant justice side, I guess you could say that's race-based but it's really not. We're talking about how immigrants are treated, primarily in the agricultural and timber industries, not the only ones but that's where most of it goes. We're addressing those kinds of things. We have a large program called Teaching Tolerance, where we distribute materials free of charge to our schools all over the country that addresses issues of diversity. I could go on at length but you can see all this on our website.

Q: What I guess I'm getting at, have you moved from having been almost entirely a race-based organization to this much broader church, if you will, of all kinds of rights?

JL: Yes, absolutely and again, yes, it was primarily race-based but, as I'm sure actually Pam could tell you since she was heavily involved in some of the early sex discrimination cases, it was race and sex. Race being the dominant issue all the way up, I would say, probably until the late 80s or early 90s.

Q: And when you look at America now and see what's happening, do you sometimes feel that you've got to go back?

JL: We haven't left that issue. It's not...

Q: I'm being facetious but it was pretty shocking to go back. I have a friend who's a Black reporter who seems to think that I'm suddenly very naïve and can quote God knows how many figures, but having lived away for so long and you go back and you see what's happening in such a blatant fashion, it does feel like a kind of civil war being played out, and that's partially because we in the media tend to put it out there in a very immediate sense.

JL: I'm not being critical of the media. We live in a different world now and the world of social media has... and the amount of material that's out there is overwhelming. So when you have... and it's the good, the bad and the ugly, right? The good is that when a black guy gets shot by the police in Minnesota or another one in Baton Rouge, all the information is out there. Everybody knows about it. You don't have to wait on three networks evening news and the *New York Times* or the *Washington Post* or the Chicago... what's the Chicago?

Q: The *Chicago Trib*, the *Chicago Sunday Times*.

JL: Yes. I mean you don't have to wait on the newspapers and the evening news to see what's going on, it's all... social media is everywhere and you get good information and bad information and that's good, it's there. The bad is that it also creates... and particularly when you have politicians using it to political advantage, it creates anxiety, fear that

frankly wouldn't have existed in the same way back in the fifties and sixties. The 50s and 60s for black people were much worse, that's just the way it was. But the country, unlike... Obama gave a speech, I think it was after the Dallas police killings and I just thought it was just terrific. It's not that we've overcome the divisions, I'm not sure we'll ever overcome the divisions between and among religious groups, ethnic groups, racial groups in the U.S. but it is much better than, if you can take a broad look at it, it appears, and that's my opinion and I think that seems to be where Obama is. We have a lot more in common. As they say, a lot more that unites us than divides us.

Q: This is a big question: How important do you think the lawyers and the law have been and can continue to be to what has improved and what could still be better?

JL: I think the lawyers and the law, I do not think that this is, in some areas you will continue to see lots of civil rights litigation. I think in the areas of voting rights, for example, where that's still a big issue, given some of the laws that various States have passed that inhibits voting. I think that will harm really those who are in the lower socioeconomic groups more than anybody else, and that typically means that there's going to be a racial component or an ethnic component to it. So there's still lots of litigation there. As long as states continue to pass anti-LGBT legislation, you're going to see a lot of litigation there. And it takes me back to our Teaching Tolerance project, I think that the broader... and these things are very significant. They change things. If we go to New Jersey, which we did, and file a lawsuit against, interestingly, a Jewish organization that does conversion therapy, the name of it was Jonah, and it was taking in kids who their families thought were gay and telling the families we can convert them back to straight, and operating out of New Jersey. So we sued them for fraud in a state court and won. So there are issues that require litigation, but I look to our Teaching Tolerance program where the future is the kids and the more you can expose children to issues of diversity, give them some appreciation of the civil rights movement, which is taught pitifully in the U.S. and we've got a big program trying to change that now, the more you can do that, the better the future's going to be because you're going to have kids who grow up with different attitudes about these than their parents. But I think the whole idea that somehow there was going to be some remarkable revolution in race relations following *Brown vs. Board of Education* and we would have a country in whatever people thought then, 10, 20, 30, 50

years that was going to be unified and these issues would disappear was just a fantasy. That was never going to happen and I don't know what this professor at, was it Harvard?

Q: Yes.

JL: I'll have to Google him and see what he thinks, but he can pontificate all he wants to about how things might have been approached differently but I'm not sure who the hell he thought was going to approach them differently, or where the support was going to come from, or why a dominant white majority in the United States was all of a sudden going to decide that it was going to change the way the economy worked so that you would be more inclusive and you'd build a stronger economy in the neighborhoods that are so poverty stricken now and weak and have lousy educational systems, would have been better today. I'm not sure how he would have effected that. It just is beyond me. It is a long haul and I just think that our ability to reach out to kids in grammar school, middle school, high school and give them some appreciation for what differences are and why it's important to both understand differences and be tolerant of differences. Sometimes we use the word tolerant and people say oh that sounds like tolerate, right? Well, if you look at the definition of tolerance, it's a different entity. It meant understanding and appreciating others, and that's where it is. I think that's the future.

Q: Let me ask you this. Where would you see the cause or civil rights lawyer today? Where can that person, what should that person be doing?

JL: That person could be working on any of the issues that we've been talking about. They could be working on issues related to discrimination based upon gender identity. They could be working on issues related to voting rights. They could be working on issues that have to do with, in particular, public education and the way in which minority communities and lots of urban communities are treated in terms of the educational system. That's where they could be and are there still issues? They can work with issues that relate to the relationships between police and minority communities in our country which obviously we've got a long way to go on that, and those are issues they can work on. It doesn't necessarily mean bringing lawsuits either. It means you can... how about this? You could run for office. You can be a lawyer and run for office. Lots of them do and take positions that are really important in your community that deal with the civil rights issues.



So there's a whole broad swathe of things that I could talk about that still require and benefit from people who view themselves... from lawyers who view themselves as having some commitment to civil rights. And by the way, I mentioned this earlier but I see it in law firms all around the country, big firms that we work with all the time that do... where the firms are committed to putting money and lawyers into efforts that relate to civil rights, whether we're talking about immigrant justice issues or issues that relate to race.

**Recording ends 79:50 minutes**

## **Appendix 6: Interview with Michael Meltsner, Lawyer and former First Assistant Counsel with the NAACP Legal Defense Fund (LDF)**

21 July 2016

Recorded Telephone Interview

Michael Meltsner: “You have my permission to record and use the material in conjunction with your dissertation and any other published materials that follow that.”

Q: If you would give me permission to record this for purpose of transcription and use in my dissertation and any other publications I might undertake?

MM: You have total permission, with the caveat – not a condition, just a request – that you pass significant quotes by me before you were to publish them, just a request, not a condition in any way, okay?

Q: Okay, and now I would like you to tell me how you would like me to identify you?

MM: I’m Michael Meltsner, I am currently the Matthews Distinguished University Professor of Law at Northeastern University School of Law in Boston.

Q: And how about former lawyer with the NAACP?

MM: I was the first Assistant Counsel of the NAACP Legal Defense Fund, to be distinguished from NAACP, a separate organization, from 1961 to 1970. I was a Professor of Law at Columbia University School of Law from 1970 until 1979. I was then the Dean of the Northeastern University School of Law and I’ve been associated with the school ever since 1979, with the exception of five years teaching as a Visiting Professor at Harvard Law School.

Q: First of all, what led you to civil rights lawyering?

MM: Well, it emerged primarily from my teenage experiences, which included watching the Army-McCarthy hearings, growing up in New York City being aware of the blacklist, being politically sensitive at a relatively early age, growing up with parents who were politically interested and of a liberal disposition. I went to Oberlin College in Ohio where I studied with a couple of people who enhanced my interest in public law, and one of them was a professor who had previously worked in the State Department and who was sort of pushed out because of McCarthy type politics that was going on at that time, by the name of Robert Tufts. So when I ended up at Yale Law School, I tended to take courses that were civil rights and civil liberties. Most of my classmates, they may have taken the

courses but most of my classmates were interested in private practice. I was not. I did not think I'd be very good at that at all. It wasn't a question of disdaining what they were doing. They were going to make a lot of money and have great lives and summer houses and things like that but I just was not really interested. So my ambition was to work for the American Civil Liberties Union (ACLU) and by a series of events that are described in *The Making of a Civil Rights Lawyer*, I ended up in the office of a New York lawyer who worked for a Jewish organization writing *amicus* briefs in religion and the First Amendment cases, and he was supposed to counsel me, he was a friend of the family sort of person and I said, 'I really want to work for the American Civil Liberties Union,' and he said, 'They have a lawyer.' A lawyer and, in fact, the ACLU had one lawyer at the time. It had many volunteers but it had one staff member.

Q: And was he Jewish?

MM: I don't know. I'm not sure at all.

Q: Do you remember his name?

MM: No. I have it somewhere.

Q: Didn't Ernst, wasn't he one of the founders?

MM: No, not Morris Ernst. Morris Ernst was a prominent practitioner at the time but he was in private practice, and he certainly handled ACLU type cases as a volunteer. He was very public spirited but he was not a staff member. He may have had a title the way Ruth Ginsburg did decades later as a counsel to ACLU but that's not what I'm talking about. I'm talking about being an employee, the way I was with the Legal Defense Fund. So as I was leaving somewhat dispirited because, first of all, this fellow I don't think he had a great career and he just told me forget about the ACLU. As I was leaving, he said, 'By the way, Thurgood Marshall is looking for someone, call him up.' So I called the Legal Defense Fund and I got my professor, the most notable and influential professor one could have called upon in a way at the time, Alexander M. Bickel, who was the leading constitutional scholar and the person I'd taken the most courses with at the Yale Law School. He recommended me and he's recommended the job, and I interviewed with the Legal Defense Fund and got the job, and I think I described in the book my interview with Jack Greenberg, I won't go over it now but one thing that stands out is that I said to him at the end of the interview, 'Should I read something or do something to prepare?' I was going to come in a month, and he looked at me and he said, 'Well, you might read my book.' He'd written a book about civil rights law and I'd been in Europe and Israel for the previous year just not working. After 20 some odd years of school, I just left the country

after I took the bar for a while and so I was a little rusty. So I took the bus to Columbia University book store and I bought every book about race, including his, that I could find and for the next month just sat and read, and realized what an ignoramus I was. So that's how I got to the Legal Defense Fund.

Q: I think I have a couple of his books. I have Crusaders but I also have another book he wrote.

MM: Race Relations and American Law?

Q: Yes, I bought it, I'm getting a library now.

MM: Well, that was the book.

Q: I haven't read it yet but it is there and I have glanced through it. My bibliography is now, and I have only written one chapter, over seven pages long. And you do address this in the book but clearly we're not talking about the book now so we need to address it here. You talk actually quite a bit about being Jewish. So am I right in assuming that on some level your sense of your own Jewishness, whatever that might be, played a part in informing this decision on some level?

MM: Well, I dealt with it in the book because it is an issue to be dealt with and it's an issue that people talk about and it's an issue that Jack talks about. But the influence of being Jewish on me is certainly latent. That isn't to suggest it wasn't there and isn't there but I'm a totally secular person and my 'divorce' from formal religion was relatively early in life, and I would only find myself in a house of worship if I was invited by someone who was being baptized or Bar Mitzvahed or something of that sort.

Q: I suppose I'm looking at Judaism less as a...

MM: Cultural.

Q: Yes, I am so maybe I should say on your cultural roots as a Jew, significant to your decisions in terms of how you got to where you are, how you think about your sense of responsibility, how you got to the law and civil rights lawyering?

MM: I'm sure all that is very true and I will talk about it but what I want to emphasize is it's latent. In other words, I did not sit around or opine or talk about how, oh I'm going to do this because I'm Jewish or nor did it really introspect along those lines. But looking back at it and trying to analyze it and write about whether there was something there, of course as a cultural matter, being Jewish probably was very significant. My basic understanding of that, if it's not too intellectual, is that I grew up in a culture, and in a sub-culture and in a family, where ethical issues and human rights were significantly discussed and passionately cared about. Now I think some families are like that. Some are not. Some

cultures emphasize that. Some don't. In the world of Jewish Americans, it's kind of an easy step to say look, these are people of the book, they follow the Torah and the 'law' and when they want to be Americans, and perhaps to avoid anti-Semitism to a certain extent, be full scale Americans like many immigrant groups always want to be or want to be in America, they took on the Constitution. They became Constitutionals. They became human rights advocates. They became people who believed in basic rights, the Bill of Rights, freedom of speech and so forth. It's a way of becoming a full American, transferring the cultural tendencies of ethics and rules, lawyers' ethics, laws, rules, standards from one context to another. Now I emphasize I did not sit around mulling this over. It's just as I try and explain to myself, to my children and grandchildren and to you and to the audience of *The Making of a Civil Rights Lawyer* the relationship, that's what I call up with.

Q: Interestingly, that last bit, this way of becoming a full American has been echoed in a lot of the reading that I've been doing actually, about the idea of what American meant to Jews as marginalized people and how that then spilled over to or became part of a sense of responsibility that leant itself to the pursuit of civil rights for others, especially African-Americans. Several people have posited this idea of a Black-Jewish alliance. I don't think I'm necessarily talking about a formal alliance but some sort of maybe bi-racial coalitions, whatever, that existed between individuals and between organizations. Do you buy into that? Herbert Hill, for instance, he dismisses that. He says it's a crock, basically. Do you dismiss it or do you think there is something to it?

MM: That's too broad brush for me. If you start with the civil rights movement, you see that there were many Jewish leaders and organizations and activists and attorneys who supported the civil rights movement at various points, and prominent people - consistent with what I said about an interest in human rights, and the critique of that is oh, you did this to your own motives. In other words, you did this so you would get something out of it, not because you cared about African Americans and their situation. To which I say, so what? Who cares? People always have a self-serving motive as well as others but they were both on display in the civil rights movement.

Q: They're not mutually exclusive, are they?

MM: Absolutely not. It's a narrow understanding of human nature to suggest that it's one thing or the other, and that they both can't exist. Certainly, and just being personal about it, I profited enormously by my 9.5 years at the Legal Defense Fund in so many different ways - growing up as a person learning my trade, being able to play a public role. I

suppose it played a role in me being offered prime academic jobs. All sorts of things. On the other hand, I didn't take the job for that reason, nor did I work like a son of a bitch for 9.5 years on various cases for that purpose. I did it also because it was the right thing to do and because it made me feel wonderful because I was helping people and helping myself at the same time.

Q: Do you think, in a way, I'm just thinking of how you happened to have gone to Yale, my dad happened to have gone to Northwestern, although he switched to go to DePaul because of money, although the G.I. Bill helped pay his way but nor was he a civil rights lawyer, but I'm just thinking of Greenberg and Columbia and a whole bunch of people who went to Harvard but those are exceptions to the rules, just as Jews, there were quotas, they also didn't go into Wall Street firms and all of that, and has all of his theories about this. Do you think that that was part of what... I mean you worked with a lot of Jewish lawyers, is that right?

MM: I worked with Jewish lawyers and non-Jewish lawyers.

Q: I'm just wondering, it's interesting if you look at, there's a guy named Hilbink who wrote this thing for the anniversary.

MM: Never heard of him.

Q: He wrote a thesis which was presented for the 1995 reunion of the Lawyers Legal Defense Committee.

MM: The Lawyers Committee for Civil Rights Under Law.

Q: I'm not sure it's that. I don't know, I've got the AJC original papers.

MM: What started out as the President's Committee.

Q: No, not that one.

MM: Say it again.

Q: I don't have all my papers with me here. I think it was the Lawyers Legal Defense Committee. It was almost at the point at which LDF.

MM: Do you mean LCDC?

Q: Yes, probably. What's that?

MM: Lawyers something Defense Committee.

Q: Yes, that was it. There are like 11 people who were on the board... what's his name?

MM: Rachlin.

Q: Rachlin? Greenberg. Who's the Jewish guy who fled Germany but he wasn't a lawyer, Schwarzschild.

MM: Henry Schwarzschild. I got ya, I know the whole story so what do you want to know about it?

Q: No, I was just going to say 1) six out of the 11 who started it are either part of Jewish groups or Jews, and if you then look at the list of transcripts of interviews that this Hilbink did, again more than 50% of those which he listed in his bibliography are Jews and yet he says within this, I don't see any sort of link or common denominator, although at some point in the paper he talks about there were a lot of Jewish lawyers, and I'm sitting here and saying hold on, there's got to be some kind of link here. And I think 2) disproportionate representation, even though probably more Jews were lawyers disproportionately than from a larger pool but also the type of contributions, the type of intervention. Do you see that? Do you see some sort of network? You talk about you're being Jewish. Jack Greenberg talks about his being Jewish. The book by Cyril Robinson talks about Maurice Sugar and Eugene Cotton as Jews and general counsel to unions. But I've never really seen the subject of lawyers' interventions specifically in this longer civil rights movement beginning in the thirties with the unions going into the classical period of the sixties, and continuing at least the lawyers, if not the general Jewish population, continuing support on some level for civil rights.

MM: Well, you have to clarify a few things for me. First of all, are you talking about institutional arrangements of some sort when you say a network?

Q: No, because you need to be careful and it's hard because I've been discussing this with my supervisor, he wants to talk about as a group and I'm saying I'm not really saying a group. What I'm saying is the lawyers have showed up as footnotes, chapters, biographies, personal experiences, *The Making of a Civil Rights Lawyer* is semi-autobiographical, as is *Crusaders*, but I haven't seen anything where somebody's actually sat down and gone, Jesus, there are a lot of Jewish lawyers specifically, not just Jews, and their involvement with rights, whether race-based rights or other rights, employment rights, workers' rights, seems to show a disproportionate number, the actual lawyers. Except for the international Ladies' Garment Workers' Union, there really weren't a lot of Jews in the meat packing union or the UAW, they were tiny numbers and yet the leadership and the lawyers were Jewish.

MM: It seems to me that any sensible cultural analysis would support the notion that Jews were disproportionate in certain of these settings, and you then would have to say to yourself I suppose, empirically I think that's overwhelmingly true. They weren't the exclusive people there and there were nasty, awful Jews doing things too at the same time.

They were representing the slum lords and Roy Cohn and so forth but in many settings, there were a significant number of Jews and then you would say to yourself I suppose, why does this happen? And then one goes to what you were talking about before, although one can get finer grained if you had the empirical data or could find it and say, for example, did every one of these people have some kind of anti-Semitic experience? Or some similar experience that led them to this work? Or is it not necessarily so? Did they just kind of absorb their ethical, cultural, constitutional heritage which led them to want to become more American? I don't know. Does that help you, what I just said?

Q: Well, you're basically telling me what I know but you're not telling me what you think.

Q: I want to know what you think, I know what I've read.

MM: No, that's pretty much what I think. I think it's crazy to deny that this background didn't have something to do with the choices people made. Some people made them, some people didn't but a lot of people made that particular choice and all I'm saying is, you can look at the fine grained biographical trail or thread in these cases if one can and you'll find some of that, or you could analyze it in terms of a more macro situation, the way we were talking earlier, and I think both acts came into play. I'm not sure every... I mean Henry, for example, had a European experience with anti-Semitism. I had a Queen's experience with anti-Semitism. They weren't exactly the same but I'm sure they pushed both of us in a certain direction and that's what I think. I'm not just talking about what other people think, that's what I think.

Q: That's fine. That's what I need, I need to know what you think. Maybe I'll play you off against someone else who thinks differently. I care about what you think.

MM: Please feel free.

Q: No, but this is the point, otherwise it was interesting talking to a Southern lawyer...

MM: I want to add something to that. The part of me that is a lawyer, activist, worker, litigator, what have you, did not sit in these rooms and say to himself, there are eight Jews here and 12 non-Jews or something like that. On the other hand, part of me, and I'm talking about me, not anyone else, I'm a novelist, I've written a play, I was psychoanalyzed. I could look at any setting and take apart its ethnicity, its aesthetics if I was of such a mind at that moment. One of the traits I have, which I inherited I think from my father, was whenever I go to a sports event, I look around and see who's black and who's white and I've done that ever since childhood because my dad took me to Ebbets Field at an early age, and as I think the book probably describes very briefly, he cut a deal, the first endorsement deal with Jackie Robinson. So I bring different things to the settings



but I don't think many... and here, this is just an observation about others but it's my observation, I don't think most of these guys sat around saying oh, he's Jewish. I think in the civil rights movement we were focused on other things, on the enemy, on our clients, on the judges, the law and all sorts of stuff that was instrumentally relevant and it was only in the more political domain or not because they were probably not born then but the people in that era who were more public speakers or activists, non-professionals, quasi-politicians, agitators, whatever, they're the ones who maybe started talking about ethnicity in fine grained contexts, and for appropriate reasons some of the time. They were being oppressed by various ethnicities but that's not the way it was in the movement, for me at least.

Q: Let me ask you this, do you think that Jews saw or see blacks as other than gentile, in other words as Black, not gentile so much, not defined by their religion and that Blacks saw Jews as Jews and not as white prior to the mid-sixties?

MM: I'm not going to help you here, I see them as people. Yes, they're black. Oh well, he's Christian, he's secular like me and couldn't give a damn. He goes to church. He stands like Martin Luther King when he talks on the pulpit. I just don't approach people like that.

Q: That's fair enough. Hasia Diner has this theory, if you will, of how the two groups saw one another. She also suggests that never has anything been so lamented by people who have absolutely nothing in common in terms of this sort of idea of some sort of special Black-Jewish thing.

MM: In other words, she says blacks and Jews don't have anything in common?

Q: Well, she doesn't say they don't have anything in common, that would be unfair, no but she thinks... and I wish I had the quote, it's a very good quote about there are people... I think because, to some extent, the iconography, the films, the media has romanticized the movement of the sixties. What it was to me as a kid, I'm sure was not what it was to you as a lawyer, having to get people bailed out of jail, having to try to get stuff in the courts to set precedents. All this sort of thing and there are people who... I asked someone, a friend who knows Adam Clayton Powell III, if he would talk to me and he said, 'Oh God, there is no more. What a shame. I remember it, I remember I've got a photo of my parents collecting for Israel bonds in Harlem driving around, I'll see if I can find the photo.' And someone else said to me, 'Oh God, if only,' and Julian Bond kept writing these speeches about this special Black-Jewish thing and we've got to keep it going, we've got to resurrect it and I'm sitting here thinking, hold on, maybe it needs to just... if it's finished, it's

finished and as Blacks take over more agency for themselves, maybe it's less necessary than it once was.

MM: Well, of course it is. The metaphors for my little world was Thurgood picking Jack instead of Bob Carter to succeed him and then when Jack retired, the notion of a white man taking that job was ridiculous.

Q: One time I thought it was very odd that his choice should have been a white Jew as opposed to a Black leader within the NAACP, but that seemed to me much more of a matter of internal politics from what you have said and what others have written and just talking to people. Would you agree that was internal NAACP v. LDF?

MM: It was two things I think. One is it was extremely personal and biographical between Thurgood, Bob Carter and their relationship and, on the other hand, it was choosing somebody who was a brilliant choice, who did it right. I'm not saying Bob wouldn't have. I have no idea but you have to give a person who makes that decision and makes it right credit, and the third thing to say is it couldn't have happened in 1984 or 1985 when Jack retired and named Julius Chambers, who was to share an office with me, as the Director-Counsel. So I'm just reinforcing what you were saying.

Q: Yes. First of all, how would you define civil rights and then what is the role of a civil rights lawyer or a cause lawyer; how do you see those things?

MM: Well, we're in the world of abstraction here. Civil rights are the claims that individuals have for fair and equal treatment from their government and agglomerations of power in their society. They're really human rights that should be universal, to the extent one can without trampling on various cultural differences. I'm sorry, the second question?

Q: How do you see the civil rights lawyer? Should the civil rights lawyer be a social engineer? Is there room for that? Is that a fair way of looking at it or is that not it at all?

MM: Absolutely, that's one phrase that I think describes the role. Another is giving people access to levers of power that can ensure that those rights are honored not only in theory but in practice, and it's just like going to a doctor. You need a tumor removed, you go to a surgeon. You need to establish your rights or your community's rights in a rule of law society, you need lawyers and activists. Now that doesn't mean that litigation is the best or only way to do it and, in fact, lawyers don't always litigate. They negotiate and draft and do other things.

Q: The whole idea of litigation, which some of these people you were talking about before, seemed to feel... in effect, I have to say really goes after Jack Greenberg who, for a while there, was becoming my hero and I'm sitting there...

MM: What's her problem with Jack Greenberg?

Q: Well, again the whole *Brown* thing and the fact that...

MM: What's the *Brown* thing?

Q: Well, that *Brown* is being celebrated and that *Brown* was an inhibitor, that prior to *Brown* more things were being addressed. She talks about, for instance, sharecroppers in the South, the Department of Justice and who was representing what types of things, and that the race-based litigation around *Brown* seemed to narrow, if you will, a wider pursuit of civil liberties and also seems to think that Greenberg was not adaptable. Now I see that the LDF did adapt to the sit-ins, in fact, and he has got a chapter, for instance, 'Out of the Courts and Into the Streets.' I would have actually said out of the courts, into the streets and back to the courts because in order to keep people out of the streets, you have to get them out of jail, into the court and back in the streets.

MM: Well, we're in a place here where it's very difficult to talk without having a microscope, if you will, and focusing on very particular things. For example, you start by talking about the sharecroppers and how the NAACP related to that problem, as I recall her work and I haven't read it in ages, and how the NAACP related to the DOJ at that time, right? Well, Jack Greenberg in 1952 was nothing. He was a private in the Army. So to criticize Jack Greenberg for any of that is utter nonsense. Now you then moved onto – and I'm not criticizing you – what was basically a 1960's issue which is the issues of the sit-ins and there at first Thurgood, who was the Director-Counsel until December 2<sup>nd</sup> 1961, he started by being totally resistant to disruptive conduct because he thought it would boomerang. He came around very quickly but that was his initial response, and it comes out of the fact that he was a person who 'grew up' in the law at a time where that kind of stuff wouldn't work, and I think you have to give him credit for a) being a person of his time and b) being flexible and smart enough to change. Now Jack, who was not the boss at that time, he did not say don't do this. In fact, he was the mastermind who brought the people together – I can name them if you want – who eventually created the theory which ended up with all the sit-inners getting off. I wrote some of those briefs, I know who provided the intellectual muscle and the leadership. Now LCDC is a whole other story and this is the one place where I have publicly criticized Jack and that is that he and Thurgood, he maybe less than Thurgood but certainly he was socialized into this in his early years, were fearful of being labelled communist sponsors, pinkos, etc. The NAACP was constantly – and remember LDF was part of it and until the fifties – tarred with this brush and it went back to the Communist Party involvement in the Scottsboro cases and so on.

And for very sharply defined political reasons, that generation of civil rights lawyers was scared about that and they took evasive action. Well, the Lawyers Guild was one of the organizations involved in the 1964 coming together and people like CORE. Rachlin and other people who you talked to or mentioned, they didn't care. That was okay with them. If you were working on the ground, fine. Jack had his reservations about that. I think he was wrong but part of his problem was that we were paying the bill and we were picking up the cases, and he had to worry that these guys were coming in for a vacation and spending some time in Mississippi, which was to their... they were courageous in doing that, but then they went home. So the combination of him being fearful that the federal government had treated the Guild as not maybe labelled communist front organization but they sure came after the Guild in that way, and a combination of are these guys legal tourists? So he was very resistant and he and Mel Wulf at the ACLU had big problems. They argued and fought and so forth. My generation of LDF lawyers, of Jewish and non-Jewish and black LDF lawyers, we may have done whatever Jack asked us. I don't want to be specific about it but it just wasn't our issue. It was them guys back them. It was their problem, not ours.

Q: Did you have an FBI file?

MM: Yes.

Q: Do you have it?

MM: No. I had it at one point. The main document was... isn't there a kind of ice cream sundae or soda called a 'black and white?' It was mostly black. It was all blacked out. The one thing I remember is that in the mid to late sixties, Bobby Seale of the Panthers was charged with conspiracy to murder or something like that in New Haven and we were involved secondarily in his defense because we were also representing him in the Chicago cases, and I spoke to a lawyer who was directly representing him in New Haven.

Q: It wasn't a guy named Koskoff, was it?

MM: No, but I forgot his name but I suppose again it's somewhere in my archives. I spoke to him on the phone and the FBI had tapped the phone and when I got my file, I saw that they'd misspelled my name, so it was his file that I got it from really. Somehow or other, they didn't quite put it together. He sent it to me and that was the most interesting FBI contact of that nature I ever had. There was really nothing to it. At LDF, we would often, especially in the first three or four years of the sixties when we had an ambivalent relationship with the DOJ and, of course, that meant the... and the FBI had a totally negative relationship to the civil rights movement in the South. We'd often pick up the phone and say something or make some wise ass comment like, 'Hey guys, put on the tape

recorder,' and occasionally I would hear a click when I was talking. A good part of my job was talking to Southern lawyers or staff members, colleagues who were in the South from various law offices and talking to them about strategy in cases and litigation and so forth. So we basically assumed – I certainly did – that many of these conversations were taped. So when I ordered my file, which was a million years ago, none of that came out. I don't know why. Maybe it wasn't true.

Q: Were you aware of this sort of turf war, I would describe it as, between the Lawyers Guild and LDF, a sort of almost competition over representation of the students that summer?

MM: As I told you, yes I was, but it was like an unfair fight. I mean I think part of my criticism of Jack, and I have the greatest respect for his work and for what he did, is that who cared? They were not comparable in strength and to the extent they got involved, so what? They were representing people who were charged with trespass and resisting arrest and stuff like that on the ground in Mississippi and Alabama and Louisiana. I have no problem with that. And competition involves some notion that people are standing around saying, they're going to get this. There was no real competition for anything except a few cases and it wasn't like competition for *Brown v. Board of Education*. These were misdemeanor cases that usually went nowhere and LDF during these years handled more cases before the Supreme Court of the United States than any other legal entity, except the Department of Justice through the Solicitor General's office and had an amazing record of success.

Q: What do you think was LDF's greatest success and do you think it is continuing in the traditions and continuing... is it still as successful? Is it still as significant as it was? And if not, why not and how could it be?

MM: Well, first, *Brown* is the greatest success and I don't measure *Brown* on the basis of bodies moved from one class to another, which is the critique of *Brown*? Yes, it's supposed to have integrated the schools and it took well over a decade before the Federal Government accomplished much of anything by helping us in the 100 or so cases we had. We had just minor successes until then. What *Brown* did was it broke the mould and it changed perceptions. That's the importance of *Brown* and so the whole kind of analysis of *Brown* as oh, it didn't lead to integrated schools right away or at all in certain places, it's true but not quite germane to the larger question and the reason why we have a total different society today, not that it's without its major problems, we have a totally different society when it comes to basic integration, is because of the change in thinking, that was

*Brown*. If you go back to Myrdal's *An American Dilemma* where he says, okay, you've got a place which is entrenched racism but it also has a kind of ideology of fairness, and that's what *Brown* was. It was the pushing forward of the ideology of fairness in the face of centuries of rejection of it. So that's the foremost. The next thing on the schedule is simply converting the LDF into a real arm of the civil rights movement in the sixties. LDF represented every group that needed representation, with very few exceptions. There were exceptions. I describe a major one in the book in the Margaret Burnham / Jacqueline Burke conflict.

Q: Is this the Angela Davis issue?

MM: Exactly. We represented Martin Luther King. I was almost thrown into jail in Chicago for representing a Blackstone ranger. It was involved in what Greenberg I think must have called trench warfare and with what you have to honestly say is relatively small resources. At the very most there were 25 lawyers, most of the time there were less. An amazingly small budget. We did the job. So that's the second thing. The third part of your question is today. Today I think the LDF is led by a brilliant lawyer and if you've never watched her at work, go to YouTube and see if you can search something like Sherrilyn Ifill and Rudy Giuliani and you'll see how good she is. I see them involved in all kinds of good important issues but I don't follow them in context specific ways – I'm dealing with other things – so I can say this brief is better than that brief or stuff like that. But if someone came along today and took them away, I think you'd know right away because they're a highly respected group of people who get involved in the main racial conflicts of the day. It doesn't mean they win everything, especially given the move to the Right in the judiciary.

Q: That's the other thing, I don't want to only talk about these other academic legal historians, whatever you want to call them, is they seem to divorce the times. I mean the judiciary, to some extent, is hamstrung by the public and the lawyers are hamstrung by the judiciary and the selection of cases. The times, to some extent, surely dictate what you can do, how far you can push it and what kind of strategies can evolve and be used effectively; is that not the case?

MM: Absolutely, you put it beautifully. That's what a lawyer does. It's just a context and that's what LDF lawyers did in a variety of contexts and when you read critiques of it, it's because in those specific contexts, maybe they didn't do the best job like they're human beings.

Q: Instead of agreeing with what I said and how I put it, tell me how...

MM: Why not, it was so well put.

Q: Yes, but I want to hear how you... I want to hear a lawyer say it to me. I want to hear how it worked for you?

MM: Your job in a lawsuit is to advance the goals of your clients and, to a certain extent in test cases and in civil rights cases, your clients are standing for a larger group of people and / or rights. But you have to deal with the world as you find it and so that may involve negotiating settlements that you think are far from perfect. It may involve acting a certain way that isn't your preferred way of working. It may involve being patient when you wish you didn't have to be patient. If you're arguing before a Supreme Court that is split with Anthony Kennedy in the middle, do you pretend that Anthony Kennedy isn't going to decide the case and you have to structure your argument to meet what you think are his concerns? That's a metaphor for the problem of a lawyer who's using the law to either advance certain positions and certain people's rights. It's unfortunate that there are all these millions of people who think Donald Trump is wonderful, but you would have to take that into account if you were dealing with them and that's why lawyers are disliked, among other reasons, because they're the ultimate pragmatists and even in the human rights world, you have to do that if what you are into is winning a result. It's getting a result, even if you get the result you're losing, you have to do that. Now the 'academics' – again in quotes because there are academics and then there are academics. I'm an academic and have been since 1968 or 1970 really, there are academics and academics, so I'm not saying they're all bad or good or anything like that, but the academic decisions that you're moving onto, and maybe have to write about in your thesis, they are a step removed from that. They're not in a position... they should be able to internalize that role, to a certain extent, and maybe they do. When they're critiquing what people did, maybe they're saying that you could have done it better and they might be right or maybe they're saying you could have done it better because they need to finish an article and want to look good or sound good to... sound good and pure and wonderful. Sometimes they do that.

Q: So finally, going forward, I go back to America, I see to me what looks like Black men being executed by police in certain circumstances. I see little on the surface anyway of leadership within the Black community, at least the media isn't representing any representation of it going on, and you kind of despair. A friend of mine who works for ABC who's Black, a Yale graduate, a correspondent my age sits there and thinks I'm naïve and what did I think? Did I not realize this was going on?

MM: What was going on? The ...

Q: Yes, this whole thing and I'm sitting here and thinking, well, no, I guess I didn't actually realize. I know what the shooting statistics are in Chicago every time I go back, it's mind-blowing and that's Black on Black violence, but no. He went on about the Chicago PD. Who's failing who here? Is there a role for lawyers within the community? Is there still a Jewish lawyers' commitment to the movement? I talked about what I perceived as a decline in this rhetorical alliance and yet you tell me about Jewish lawyers and representation of Black Panthers in the seventies. Mike Koskoff, the guy you were talking to, you yourself.

MM: I didn't mention him, you did.

Q: I mentioned Mike, you mentioned the other lawyer who was representing Bobby Seale.

MM: Yes.

Q: But I'm just saying. So I see an engagement, at least on the part of lawyers, if not the Jewish community or Jewish organizations when you have *amicus* briefs no longer being filed by certain groups that used to file them. Do you think that affirmative action, that the rising anti-Semitic rhetoric led to a decline in levels of cooperation there that extended to Jewish lawyers?

MM: I'm sure it led to that. I would say that it probably affected the behavior of some people but again it's too abstract for me. I don't know that Jewish organizations aren't filing briefs. You talk about leadership - it's out there, it's just a different form than it was in the sixties. It's not like the NAACP is where everyone's focus is. I'm talking about the NAACP, not the Legal Defense Fund. LDF has tried to do what it can in this area. The Black Lives Matter movement has had an astonishing impact and if you take it as a movement rather than an individual, that's leadership. They've taken on... I'm not saying they've won anything but that those morons in the Republican Convention are screaming about Black Lives Matter, that people are complaining that a flag in Summerville, Massachusetts that says Black Lives Matter on City Hall should say all lives matter. That's leadership because it's focused the issue and the attention of the country on what, by your own experience, was not fully experienced and realized and understood.

Q: So where is the role for a lawyer such as yourself these days? Is there a role? Is there a future? Do you see the law continuing as a vehicle for reform with lawyers at the helm, as it were? Or is it no longer sexy? Is it irrelevant?

MM: Well, look at what the Supreme Court's docket is like and you see that lawyers are obviously relevant. Yesterday's headline was that Texas ID law, which would have restricted minority voting, was somewhat struck down by the Fifth Circuit, the most



conservative circuit in America. That's a lawsuit - not that it's going to change the elephants or unicorns. No, I don't because that's not what I'm doing these days and one would have to look at that if that became important. So what I'm doing, I mostly do three things these days. One is I write about these issues and this is occasional op ed kind of writing and I don't get as much attention as I wish I did for these things, but I continue to write them and I've written maybe six or seven of them in the last year, most recently for Boston.com about the shootings, and that's one thing I do because I like doing it and because it's all I can do. I'm too old to be litigating these days, that's full-time work for people. I don't believe in part time litigators.

**Recording ends mid-sentence 63:00**

