

MARK S. BRODIN

Boston College Law School  
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EDUCATION

Columbia Law School, J.D. 1972 cum laude.

Board of Editors, *Columbia Law Review*.

Harlan Fiske Stone Scholar.

Research Assistant to Professors Hans Smit, Ruth Bader Ginsburg, and Tom J. Farer.

Teaching Fellow at Columbia University Seminar in American Law, Amsterdam University, 1971.

Teaching Fellow in Civil Procedure and Property, 1971-72.

Columbia College, B.A. 1969.

*cum laude. Phi Beta Kappa (Junior Year).*

Major: European History.

Concentration: Government.

CLERKSHIP

Senior Law Clerk to the Honorable Joseph L. Tauro, United States District Court, District of Massachusetts,  
1972-1974.

LAW TEACHING

Professor and Lee Distinguished Scholar, Boston College Law School.

Professor, 1989 to present. Associate Professor, 1985-1989.

Visiting Professor, 1983-1984.

Associate Dean for Academic Affairs, Boston College Law School, 1990-1994.

Courses: Civil Procedure, Evidence, Scientific and Forensic Evidence, Employment Discrimination Law, Introduction to Lawyering and Professional Responsibility.

Visiting Scholar, Trinity Law School, Dublin

(November, 2017)

Visiting Professor, Radzyner School of Law Interdisciplinary Center, Herliya, Israel

December, 2013. Comparative Evidence.

**Visiting Professor, Boston University School of Law**

Civil Procedure, 1996-1997, 2004-2005, 2007. Evidence, 2001.

**Tufts University, Fletcher School of Law and Diplomacy.**

Trial Evidence for European Judges and Lawyers, Fall, 2007.

**Northeastern University School of Law**

Civil Procedure, Fall, 1994, Fall 2000. Advanced Civil Procedure/Complex Litigation, Spring, 1989.

**Associate Professor, New England School of Law** 1980-1985.

**Clinical Supervisor, Boston College Law School, Urban Legal Laboratory** 1974-1980.

**LAW PRACTICE**

**Staff Attorney, Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association** 1974-1980. Acting Executive Director, September, 1975 to January, 1976.

Public interest law practice. Trial and appellate work with emphasis on the litigation of class actions in the areas of employment, housing, federal funding (community development and revenue sharing), police abuse, racial violence, criminal justice, and constitutional law. Case preparation and presentation before federal and state courts and administrative agencies. The case docket of the office was divided between matters handled solely by staff counsel and matters in which staff served as co-counsel with attorneys from major Boston firms.

Significant cases: DeGrace v. Rumsfeld, 614 F. 2d 796 (1st Cir. 1980) (discrimination case against Naval Air Station); Curtis v. Hinckley, 618 F.2d 92 (1st Cir.1980) (discrimination case against Barnstable Police Department); Massachusetts Association of Afro-American Police, Inc. v. Boston Police Department (discrimination case against BPD resulting in 1980 Consent Decree); N.A.A.C.P. Boston Chapter v. Harris, 607 F. 2d 514 (1st Cir. 1979) (discrimination case against City of Boston); Harris v. White, 479 F. Supp. 996 (D. Mass. 1979) (same); Cooke v. Sarni Original Dry Cleaners, 2 M.D.L.R. 1012 (1980), affd 388 Mass. 611 (1983) (trial counsel).

**Special Assistant District Attorney, Norfolk County**  
Summer, 1987.

Trial of criminal cases in the six-person jury session.

**Appellate Attorney, Massachusetts Defenders Committee (now Committee for Public Counsel Services)** July, 1972 to November, 1972.

Appellate and post-conviction criminal matters in state and federal court. Cases included *Commonwealth v. Coviello*, 362 Mass. 722 (1973) (requiring two party-consent for installation of pen register on telephone line).

**Summer Associate, Rosenman, Colin, New York City** June, 1971 to October, 1971. Research and writing in litigation, real estate, tax, estate and corporate areas.

### **PUBLICATIONS**

#### **Books**

- Editorial Consultant, WEINSTEIN'S FEDERAL EVIDENCE (2d. ed. Six-Volume Set).
- HANDBOOK OF MASSACHUSETTS EVIDENCE (with Michael Avery) (Wolters Kluwer) (updated annually since 1994).
- CRIMINAL PROCEDURE: THE POLICE AND THE CONSTITUTION (currently in its Ninth Edition) (2020) (with Robert M. Bloom) (Wolters Kluwer).
- CIVIL PROCEDURE: DOCTRINE, PRACTICE AND CONTEXT (currently in its Sixth Edition) (2020) (with Stephen Subrin, Martha Minow, Thom Main & Alexandra Lahav) (Wolters Kluwer).
- WILLIAM P. HOMANS JR.: A LIFE IN COURT (Revised edition) (Vandeplas Publishing 2016).

#### **Journal Articles**

- "The Legacy of Travon Martin-- Neighborhood Watches, Vigilantes, Race, and Our Law of Self-Defense," 105 *Marquette Law Review* 593 (2023).
- "Discriminatory Job Knowledge Tests, Police Promotions, and What Title VII Can Learn from Tort Law," 59 *Boston College Law Review* 2319 (2018).
- "The Lawyers Committee for Civil Rights and Economic Justice Turns Fifty--A Retrospective," 101 *Massachusetts Law Review* 43 (June, 2020).
- Festschrift for Professor Michael Meltsner, *Northeastern University Law Review* (Spring, 2018).
- "From Dog-Whistle to Megaphone: The Trump Regime's Cynical Assault on Affirmative Action," 74 *National Lawyers Guild Review* 65 (2017).
- "The Murder of Black Males in a World of Non-Accountability: The Surreal Trial of George Zimmermann for the Killing of Trayvon Martin," 59 *Howard Law Journal* 765 (2016) (Wiley A. Branton Symposium Issue).
- "The British Experience With Hearsay Reform-- A Cautionary

- Tale," 84 *Fordham Law Review* 101 (2016) (Federal Rules of Evidence Advisory Committee Symposium on Hearsay Reform)
- "Screening Out Unwanted Calls: The Manipulation of Standing Doctrine," 15 *Nevada Law Journal* 1182 (2015) (*Through a Glass Starkly: Civil Procedure Reassessed* Symposium)
  - "The Slow Demise of Race Preference," 39 *N.Y.U. Review Of Law & Social Change* 369 (2014) (Diversity in Education and the Future of Affirmative Action Symposium)  
<http://socialchangenyu.com/the-slow-demise-of-race-preference/>
  - "The Fraudulent Case Against Affirmative Action: The Untold Story Behind *Fisher v. University of Texas*" 62 *Buffalo Law Review* 237 (2014)
  - "Bush v. Gore: The Worst (or at least second-to-the-worst) Supreme Court Decision Ever," 12 *Nevada Law Journal* 101 (2012) (Symposium: The Worst Supreme Court Decisions)
  - "Ricci v. DeStefano: The New Haven Firefighters Case and the Triumph of White Privilege," 20 *Southern California Review Of Law And Social Justice* 161 (2011).
  - "What One Lawyer Can Do for Society: Lessons From the Remarkable Career of William P. Homans Jr.," 46 *New England Law Review* 37 (2011).
  - Behavioral Science Evidence in the Age of Daubert: Reflections of a Skeptic, 73 *University Of Cincinnati Law Review* 867 (2005).
  - The Demise of Circumstantial Proof in Employment Discrimination Litigation: *St. Mary's Honor Center v. Hicks*, Pretext, and the "Personality" Excuse, 18 *Berkeley Journal Of Employment And Labor Law* 183-239 (1997).
  - Accuracy, Efficiency, and Accountability in the Litigation Process— The Case for the Fact Verdict, 59 *University Of Cincinnati Law Review* 15-111 (1990).
  - Reflections on the Supreme Court's 1988 Term: The Employment Discrimination Decisions and the Abandonment of the Second Reconstruction, 31 *Boston College Law Review* 1-30 (1989).
  - Costs, Profits, and Equal Employment Opportunity, 62 *Notre Dame Law Review* 318-365 (1987).
  - The Role of Fault and Motive in Defining Discrimination: The Seniority Question Under Title VII, 62 *NORTH CAROLINA LAW REVIEW* 943-997 (1984).
  - The Standard of Causation in the Mixed-Motive Title VII Action: A Social Policy Perspective, 82 *Columbia Law Review* 292-326 (1982).
  - Book Review, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS by William F. Druker, 8 *New England Journal On Prison Law* 325-330 (1982).
  - Note, *Ashe v. Swenson: Collateral Estoppel, Double Jeopardy, and Inconsistent Verdicts*, 71 *COLUMBIA LAW*

REVIEW\_321 (1971).

### **Other Publications**

- "The Federalist Society Just Won Its 40-Year War on Affirmative Action" (with Michael Avery) *Truthout Magazine*, July 8, 2023
- Op.Ed., "Justice Department Drops the Ball on the Third Anniversary of Trayvon Martin's Murder," MASSACHUSETTS LAWYERS WEEKLY, March 9, 2015.
- Op. Ed., "Court Dodged Affirmative Action Hot Potato-- Or Did It?" MASSACHUSETTS LAWYERS WEEKLY, July 8, 2013.
- Book Review, CLARENCE DARROW: ATTORNEY FOR THE DAMNED By John A. Farrell, BOSTON GLOBE, July 30, 2011.
- Op. Ed., "Justice Is Served In The *Au Pair* (Woodward) Case", NEWSDAY, November 11, 1997, p. A39.
- Contributor to MANUAL ON INNOVATIONS IN JURY TRIAL PROCEDURES (ABA/ National Center for State Courts) (1996).
- Foreword to THE ROLE OF THE EXPERT WITNESS IN A COURT TRIAL (1996) and COURTROOM GUIDE FOR NON-LAWYERS (2001) by Benjamin J. Cantor.
- Script Consultant, *On the Stand: Testifying in Court* by Webster Lithow. Video recording. Commonwealth Films, 1991.
- *A History of the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association*, 32 BOSTON BAR JOURNAL\_9 (1988).

### **PRESENTATIONS AND INTERVIEWS**

- "How The Federalist Society Came To Dominate US Law & Politics," KALW NPR Radio, San Francisco, July 20, 2023.
- Speaker, Memorial for U.S. District Judge Joseph L. Tauro, Moakley Courthouse, June 7, 2019.
- Lecture, Comparative Evidence, Insights into the U.S. Legal System, Boston College Law School, January, 2019.
- Lecture, Comparative Evidence, BCLS Summer Program for Foreign Lawyers, July, 2018.
- Panel Moderator, The View From the Bench (discussion among four federal and state judges), BCLS Alumni Reunion, Ritz Carlton Hotel, Boston, November, 2018.
- Speaker, Symposium on the Legacy and Future of Civil Rights, Suffolk Law School, September, 2018.
- Speaker at Festschrift for Professor Michael Meltsner, Northeastern University School of Law, October 27, 2017.
- Faculty Colloquium, Trinity Law School, Dublin, "American Attitudes Towards Equality: The Affirmative Action Debate & the White Male as Victim," November 1, 2017.

- Lecture, Trinity Law School, Dublin, "Comparative Treatment of Unlawfully Seized Evidence and Coerced Confessions: Ireland and the U.S.," November 3, 2017.
- Presentation, Boston College Conference of the Supreme Court's Current Term. October 28, 2015.
- Debate on Disparate Impact Theory, Federalist Society, Harvard Law School. April 14, 2015.
- NYU Review of Law & Social Change, Symposium on Diversity in Education & the Future of Affirmative Action, NYU Law School, April 4, 2014.
- Symposium, "Through a Glass Starkly: Civil Procedure Reassessed," Northeastern University School of Law, April 11-12, 2014.
- Panel Moderator, Torture and Indefinite Detention: Reflections on Michael Meltsner's Play "In Our Name," at the Boston Playwright's Theatre, September 22, 2012, Sponsored by the *New England Journal On Civil & Criminal Confinement*.
- Moderator and Organizer, William P. Homans, Jr. Endowment Program in "Political Repression, Now and Then: Comparing The 1950s Fear of Communism and Islamophobia Today." John Adams Courthouse (sponsored by Supreme Judicial Court Historical Society & ACLU) (March 22, 2012).
- Flaschner Judicial Institute, Author Series, Discussion of *William P. Homans Jr.: A Life In Court*, Social Law Library, September 22, 2011.
- Presentation on *William P. Homans Jr.: A Life In Court*, at Supreme Judicial Court Historical Society. April 8, 2010.
- Presentation on *William P. Homans Jr.: A Life In Court*, to Curtis Club, at Union Club, Boston. April 13, 2010.
- Presentation on *William P. Homans Jr.: A Life In Court*, National Lawyers Guild. April 14, 2010.
- Presentation to Civil Rights & Civil Liberties Section, Boston Bar Association, on "The Supreme Court's Decision in *Ricci v. DeStefano*: A Step Back for Disparate Impact and Equal Protection." May 6, 2010.
- Presentation on *William P. Homans Jr.: A Life In Court*, Senior Partners Volunteer Lawyers Project. June 23, 2010.
- Presentation on *William P. Homans Jr.: A Life In Court*, Keynote Address at Half-Century Luncheon, Boston College Law School Reunion Weekend. October 16, 2010.

#### **LEGISLATIVE TESTIMONY**

- Testimony Before Joint Committee on Criminal Justice, Massachusetts State House, 1987, 1992, 1997, 1999: In Opposition to the Restoration of Capital Punishment.

- Testimony Before Governor's Council, August 1995: On the Appointment of Charles Fried to the Supreme Judicial Court.

#### **BAR ADMISSIONS**

Commonwealth of Massachusetts  
United States Supreme Court  
United States Court of Appeals, First Circuit  
United States District Court, District of Massachusetts.

#### **PROFESSIONAL AND COMMUNITY ACTIVITIES**

- Co-author, Amicus Brief on Behalf of Boston College Law School Amicus Clinic in *Hedberg v. Wakamatsu*, Mass. Supreme Judicial Court.
- Co-author, Amicus Brief on Behalf of Mass. Bar Ass'n, Woman's Bar Ass'n, Mass. Academy of Trial Attorneys in *In Re Judge Shelly M. Joseph*, Mass. Supreme Judicial Court.
- Co-author, Amicus Brief on Behalf of the Massachusetts Association of Minority Law Enforcement Officers ("MAMLEO"), et.al., in *Lopez v. City of Lawrence* (First Circuit Court of Appeals) (challenging promotional practices in police departments as racially discriminatory).
- Brief of Eight Distinguished Local Citizens Amici Curiae in Support of Appellant Dzhokhar Tsarnaev (Marathon bombing case).
- Consultant to Northeastern University School of Law Report on the Underrepresentation of Minorities in Police & Fire Departments in the Commonwealth of Massachusetts (2015).
- Board Member, William P. Homans Jr. Endowment of the Supreme Judicial Court Historical Society.
- Member, Advisory Committee on Massachusetts Evidence Law: Participated in the drafting of the *Massachusetts Guide to Evidence*.
- Lecturer, Flaschner Judicial Institute.
- Board of Trustees, Newton Foundation for Racial, Ethnic and Religious Harmony.
- Member, Steering Committee, Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association (1981 to 1991).
- Member, Board of Trustees, National Multiple Sclerosis Society, Massachusetts Chapter (1993-1996).
- Co-chairperson, Governor's Advisory Committee on Affirmative Action (October, 1989 to July, 1990).
- Member, Board of Editors, *Boston Bar Journal* (1984 to 1989).
- Member, Board of Directors, Cambridge/Somerville Legal Services, Inc. (1978-1980).

- Speakers' Bureau, Public Education Committee, Massachusetts Citizens Against the Restoration of the Death Penalty (1981-1983).

#### **AWARDS**

- 2009 Anthony P. Farley Award for Excellence in Teaching, Boston College Black Law Students Association.
- 2006 Ruth-Arlene W. Howe Award, Boston College Black Law Students Association.
- 2005 Ruth-Arlene W. Howe Award, Boston College Black Law Students Association .
- 2002 Faculty Member of the Year, BCLS Law Student Association.

#### **COMMITTEE SERVICE**

Over the years I have chaired the Appointments Committee, Admissions Committee, and Clinical Committee, and have served on the Educational Policy Committee, the Publications Committee, Academic Standards Committee, Colloquia and Prize Committee, and the Promotion and Tenure Committee. I have also served on the University Elections Committee, the Academic Vice President's Advisory Committee, and the Provost's Advisory Committee.