
Volume 59

Issue 1 *Remembering the Dream, Renewing the Dream: Celebrating the 50th Anniversary of Dr. Martin Luther King, Jr.'s 'I Have a Dream' Speech and the March on Washington*

Article 5

2015

A State of Action

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Recommended Citation

ALAN GARTNER & CHRISTOPHER FERREIRA, *A State of Action*, 59 N.Y.L. SCH. L. REV. (2014-2015).

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ALAN GARTNER AND CHRISTOPHER FERREIRA

A State of Action

59 N.Y.L. SCH. L. REV. 95 (2014–2015)

ABOUT THE AUTHORS: Alan Gartner has been involved in civil rights work since college. In the 1960s, he served as the chairman of Boston CORE and as a member of CORE's National Action Council. Throughout his career, he also served as director of the Suffolk County, N.Y. Anti-Poverty Program; director of several national research projects; executive director, Division of Special Education for New York City Public Schools; and dean for research, The Graduate Center at City University of New York. For more than a decade, he served in executive roles in the office of Mayor Michael R. Bloomberg.

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The U.S. Supreme Court has a long history as the staging ground for American civil rights reform. The landmark cases are intertwined with the study of American history from virtually the earliest stages of our education. One need not have sat through a constitutional law class to understand the significance of *Brown v. Board of Education*.¹ Moreover, most people are able to reflexively rattle off the names of major players in the centuries-long struggle for civil rights in America: Garvey, DuBois, Douglass, Malcom X, and of course, King. These leaders' stories form the fabric of our nation's history: black Americans' fight for rights, from the recognition of their humanity to equal protection under our laws.

In light of both the grandeur of these legendary figures and the significance of their impact, it is sometimes easy to forget that their stories are but a few in a sea of countless activists and ordinary people alike. Similarly, many of the legal battles that took place during the Civil Rights Era are easily overlooked. Not every case was as monumental as *Brown*, from the perspective of the scope of its impact on Supreme Court jurisprudence or national policy. As we study these events, however, it is important to remember that behind the designations of "plaintiff" and "petitioner" were real people—people to whom these cases *were* significant, as illustrated by their own contributions to the Movement and the individual expressions of their dignity.

One such individual was Rudolph ("Rudy") Lombard, a man who dedicated his life to social reform.² While Lombard, and the Supreme Court case in which he was the named plaintiff, *Lombard v. Louisiana*,³ likely will not be etched into our historical consciousness on the scale of King or *Brown*, his story is an example of the courage, strength, and dedication of the ordinary people whose contributions made the civil rights movement successful. *Lombard* was significant not only to those involved; the case has a broader importance⁴ for a number of reasons. First, it was one of the early "sit-in" cases, which collectively impacted the civil rights movement of the 1960s. Second, it is an example of the innovative, progressive Court opinions written by Chief Justice Earl Warren, following the trend engendered by his landmark opinion in *Brown*. And third, it was one in a long string of cases continuing to parse the meaning of "state action" for the purposes of constitutional law, the exploration of which extends to contemporary issues confronting our country today.⁵

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1. 347 U.S. 483 (1954) (holding segregated public school systems unconstitutional and overturning *Plessy v. Ferguson*, 163 U.S. 537 (1896)). For further discussion, particularly the integral role of Chief Justice Earl Warren, see *infra* note 51.
 2. Although interviewed in the course of preparing this article, Lombard did not see the final draft prior to publication.
 3. 373 U.S. 267 (1963) (overturning trespass convictions of protestors arrested in lunch counter sit-ins).
 4. See *infra* note 39.
 5. The state action doctrine plays a central role in the case analysis in this article. See *infra* pp. 104–05. The U.S. Supreme Court's perhaps unique interpretation of the doctrine formed the legal framework upon which *Lombard* was decided. The concept of state action is a simple one on its face, however in terms of its application, the only thing clear is that it is utterly unpredictable and erratic. See Arthur Eisenberg, *Some Unresolved Constitutional Questions*, in *BEYOND ZUCCOTTI PARK: FREEDOM OF ASSEMBLY AND THE OCCUPATION OF PUBLIC SPACE* 74, 75 (Ron Shiffman et al. eds., 2012) ("[M]ore

Lombard was born in New Orleans on May 23, 1939 to a working class family. His mother, Dolores Robinson Lombard, like so many black women at the time, worked as a domestic and a cook for a white family. His father, Warren Vincent Lombard, was a hospital orderly at the United States Marine Hospital in New Orleans. Though Dolores had completed high school, Warren had little if any formal education past elementary school. Lombard's parents valued hard work and education—his father worked at the hospital for thirty-nine years, never missing a day's work—and imparted those values unto Lombard and his siblings.⁶ As a boy, Lombard attended a series of Catholic schools. He graduated from high school in 1956 and was accepted to the University of Michigan, where he began his college education.

Lombard's tenure as a young man in the North would be short-lived however. Recognizing the financial burden his family endured by sending him away to school (both parents worked two jobs to afford his tuition), he decided to leave Michigan in 1957 after one year at the university, returning to his native Louisiana where he enrolled in the Williams College of Business at Xavier University. At the same time, he began working on the docks in New Orleans and became an active member of the International Longshoremen's Association, Local 1419 ("Local 1419").

Not only were the dockworker positions among the highest-paying jobs available to black laborers in New Orleans at the time, but the Local 1419 was also the largest

than forty years ago, a Yale scholar, Professor Charles Black, decried the state action doctrine as 'a conceptual disaster area' and described efforts to analyze and apply the doctrine as 'a torchless search for a way out of a damp echoing cave.'"). The bounds of public and private action are at times murky, and the proper application of state action doctrine in these abstruse contexts is still largely unsettled. *See id.* In his article, Eisenberg explores the function of state action in a First Amendment context in the Occupy Wall Street protests. *See generally id.* Eisenberg notes:

The ultimate constitutional question presented by the broad range of protest activities undertaken by [Occupy Wall Street] within the park was whether the various restrictions imposed upon the protest activity were consistent with First Amendment standards. But there was a threshold constitutional issue that needed to be addressed before reaching that ultimate question. That issue [] was whether the First Amendment even applied in a privately owned facility such as Zuccotti Park.

The question remains as to whether [the] history of joint participation between the owner of the park and the City of New York in the creation and administration of Zuccotti Park establishes sufficient "state action" so that efforts to regulate and limit expressive activity within the park should have been subjected to constitutional scrutiny under the First Amendment.

Id. at 74, 79. The example of the Occupy Wall Street movement and Zuccotti Park thus, in a contemporary context, evinces the extreme complexity of the state action doctrine when removed from intellectual abstraction and applied to real world circumstances. For a more in depth discussion, as well as the history of public and private partnership surrounding Zuccotti Park, see *id.* at 74–86.

6. Dolores and Warren Lombard had three sons, Rudolph ("Rudy"), Roland, and Edwin. Rudy's younger brother, Edwin, attended Xavier University Preparatory School, and Tulane University. Edwin went on to become an attorney, attending Southern University Law School and graduating from Loyola University Law School in 1970. He is now a judge, sitting on the State of Louisiana Court of Appeal, Fourth Circuit. *Judge Edwin A. Lombard*, ST. LA. CT. APPEAL, FOURTH CIRCUIT, <http://www.la4th.org/judge.aspx?QueryString?713?Judge%20Edwin%20A.%20Lombard>.

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all-black union local in the South.⁷ It had a reputation for being composed of “tough-guys,” including Lombard’s uncle—himself very aggressive—who took Lombard under his wing.⁸ Of tall stature and slender build, Lombard was given the nickname “Skinny Minny” by his fellow dockworkers.⁹ By 1960, he had gained invaluable organizational and leadership skills and aspired to the presidency of the Local 1419. But this ambition went unrealized, as Lombard became galvanized by the sudden tide of largely student-led, nonviolent direct action sweeping across the country in 1960.¹⁰ This turn of events would instead propel him to leadership in a different context.

The sit-in movement started in Greensboro, North Carolina. On February 1, 1960, four college students staged a sit-in protest at a lunch counter in the downtown Greensboro Woolworth’s store, directly challenging segregation.¹¹ The Greensboro sit-in was the starting point for a new campaign of active civil resistance that “speeded up incalculably the rate of social change in the sphere of race relations.”¹² The practice spread like wildfire. Over the following two weeks, sit-ins were taking place all across North Carolina as well as in four other states.¹³ When the demonstrations began, “[s]ome whites” were dismissive of them, “[writing] off the episodes as the work of ‘outside agitators.’”¹⁴ But the public at large quickly realized the sit-ins were gaining traction—“The lunch-counter ‘sit-in’ . . . demonstrate[d] something that the white community ha[d] been reluctant to face: the mounting determination of Negroes to be

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7. *Longshoremen’s Union Head Succumbs at Age 64*, JET, May 23, 1974, at 19 (“[Clarence ‘Chink’] Henry was considered one of the most influential and competent leaders of the ILA Local 1419, the largest Black union in the South with more than 4,000 members.”). For more information on the history of the Local 1419 and the struggles of black laborers and unions, see generally BRUCE NELSON, *DIVIDED WE STAND: AMERICAN WORKERS AND THE STRUGGLE FOR BLACK EQUALITY* (2002).
 8. Interview with Dr. Rudy Lombard & Judge Edwin A. Lombard (Summer 2014) [hereinafter Author Interviews] (Alan Gartner and Christopher Ferreira conducted a series of interviews with Rudy and his brother, Judge Edwin A. Lombard, over the summer of 2014, in preparation for and during the writing of this article). Rudy Lombard’s uncle was James Simmons, who was married to his mother’s sister, Mercedes. James Simmons worked for the Lykes Brothers Steamship Company, which was headquartered in New Orleans.
 9. *Id.*
 10. AUGUST MEIER & ELLIOTT RUDWICK, *CORE: A STUDY IN THE CIVIL RIGHTS MOVEMENT, 1942–1960*, at 101–02 (1973).
 11. *Id.* at 101–02.
 12. *Id.*
 13. *Id.* at 101 (“By February 14 [the sit-ins] had spread to eleven more cities in four other states, including half a dozen places where CORE had been active previously: Rock Hill and Sumter, South Carolina; Norfolk and Portsmouth, Virginia; Tallahassee, Florida; and Nashville, Tennessee.”).
 14. Claude Sitton, *Negro Sitdowns Stir Fear of Wider Unrest in South*, N.Y. TIMES, Feb. 15, 1960, at 1 reprinted in CLAYBORNE CARSON ET AL., *1 REPORTING CIVIL RIGHTS: AMERICAN JOURNALISM 1941–1963*, at 433, 433 (2003) [hereinafter CARSON ET AL.].

rid of all segregated barriers.”¹⁵ By spring of 1960, “there had been sit-ins in seventy-eight Southern communities, and two thousand youth had been arrested.”¹⁶

In the summer of 1960, Marvin Robinson, a field secretary for the Congress of Racial Equality (CORE), went to New Orleans to organize a group of college students to stage a series of local protests. Robinson, along with James McCain—another CORE field secretary—held a meeting at the local Black YMCA attended by students, both black and white, from several area colleges including Xavier, Tulane, and the Southern University of New Orleans. Then a senior at Xavier, Lombard was among the attendees. At the end of the spirited meeting, the students voted to establish a local CORE chapter in New Orleans—electing Lombard as its chairman.¹⁷ Lombard and several others present at the meeting were invited to a CORE training program called the Miami Action Institute held at the St. George Hotel in Miami, Florida.¹⁸ While in Florida, Lombard met Martin Luther King, Jr., who was a member of CORE’s advisory board. Lombard picked King up from the airport when he arrived in Miami to speak at the workshop.¹⁹ Recounting the event during a recent interview, Lombard reflected: “I was struck by [King’s] modesty. He was traveling alone.”²⁰

15. *Id.* at 438 (quoting Harold C. Flemming, executive director of the Southern Regional Council, an “interracial group” that sought to “improv[e] race relations” in the South).

16. MEIER & RUDWICK, *supra* note 10, at 101.

17. Author Interviews, *supra* note 8; *see also* MEIER & RUDWICK, *supra* note 10, at 114. When asked why he was selected to be the chairman of New Orleans CORE, Lombard speculated that his role in the Local 1419 made him seem more sophisticated than those who were only students. Lombard’s leadership in CORE would continue; in later years, he served as the organization’s national vice-chairman. Author Interviews, *supra* note 8.

18. Author Interviews, *supra* note 8; *see also* MEIER & RUDWICK, *supra* note 10, at 112–15. Also present at the Miami Action Institute were Marvin Robinson, Gordon Carey, James McCain, Joseph Perkins, and several others who came to play a major role in CORE and the Movement in general, for example: Hank Thomas (a proponent of black capitalism), Tom Gaither, and the Due sisters (who led activities in Florida). *See id.* at 112–14. Lombard returned to Florida to participate in demonstrations in 1964. While in Florida, he met Cassius Clay (who would come to be known as Muhammad Ali) at a jazz club. Clay was training for a heavyweight championship bout with Sonny Liston and invited Lombard to the fight, but Lombard demurred. Lombard recalls that Clay confidently predicted that he would win the fight (not hard to imagine given the boxer’s often endearing, but sometimes divisive, penchant for braggadocio). His prediction proved correct. Author Interviews, *supra* note 8; *see also* Robert Lipsyte, *Clay and Liston Slug It Out in TV Battle of Barbs*, N.Y. TIMES, Feb. 14, 1964, *available at* <http://www.nytimes.com/1964/02/14/clay-and-liston-slug-it-out-in-tv-battle-of-barbs.html>; Arthur Daley, *Clay, Who Knew He’d Do It, Was the First to Know He Had*, N.Y. TIMES, Feb. 26, 1964, *available at* <http://www.nytimes.com/1964/02/26/clay-who-knew-hed-do-it-was-the-first-to-know-he-had.html>.

19. *See* Letter from James R. Robinson, Exec. Sec’y, CORE, to Martin Luther King, Jr. (May 13, 1960), *available at* http://mlk-kpp01.stanford.edu/primarydocuments/Vol5/13May1960_FromJamesR.Robinson.pdf.

20. Author Interviews, *supra* note 8. Lombard spent the early 1960s organizing with CORE and the Council of Federated Organizations, an amalgamation of CORE, the Student Nonviolent Coordinating Committee (SNCC), the National Association for the Advancement of Colored People (NAACP), and other civil rights organizations. He traveled the country organizing voter-registration campaigns. He was a CORE representative to the 1963 March on Washington and was in attendance when King gave his

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When Lombard and his cohorts returned to New Orleans, their local CORE chapter had already begun planning its own sit-in campaign. Inspired by the experience at the workshop in Miami, the group decided they were ready for action.²¹ On September 9, 1960, the New Orleans CORE staged its first sit-in at a local Woolworth's.²² The protestors, five blacks and two whites, were arrested several hours after the sit-in began.²³ The students' arrest only stoked the flames of unrest. The National Association for the Advancement of Colored People's Youth Council picketed the Woolworth's the day after the sit-in, and support and donations began to flow in from other civil rights organizations.²⁴ Fearing that CORE activities would continue to gain momentum, Superintendent of Police Joseph I. Giarrusso issued a public statement²⁵ immediately following the sit-in to quell the disturbance:

famous "I Have a Dream" speech. Lombard was subsequently brought to New York by national CORE for a "show-and-tell," a press conference, and a fundraiser at the home of one of CORE's major benefactors, Andy Norman. King spoke at the event along with Jimmy Baldwin and others. Lombard was then sent to Boston for a show-and-tell, a press conference, and to support Boston CORE, of which Alan Gartner was chairman.

21. MEIER & RUDWICK, *supra* note 10, at 114–15

22. *Id.* at 114.

23. *Id.*

24. *Id.* at 114–15.

25. The full statement reads as follows:

The regrettable sit-in activity today at the lunch counter of a Canal st. [sic] chain store by several young white and Negro persons causes me to issue this statement to the citizens of New Orleans.

We urge every adult and juvenile to read this statement carefully, completely and calmly.

First, it is important that all citizens of our community understand that this sit-in demonstration was initiated by a very small group.

We firmly believe that they do not reflect the sentiments of the great majority of responsible citizens, both white and Negro, who make up our population.

We believe it is most important that the mature responsible citizens of both races in this city understand that and that they continue the exercise of sound, individual judgment, goodwill and a sense of personal and community responsibility.

Members of both the white and Negro groups in New Orleans for the most part are aware of the individual's obligation for good conduct—an obligation both to himself and to his community. With the exercise of continued, responsible law-abiding conduct by all persons, we see no reason for any change whatever in the normal, good race-relations that have traditionally existed in New Orleans.

At the same time we wish to say to every adult and juvenile in this city that the police department intends to maintain peace and order.

No one should have any concern or question over either the intent or the ability of this department to keep and preserve peace and order.

As part of its regular operating program, the New Orleans police department is prepared to take prompt and effective action against any person or group who disturbs the peace or creates disorder on public or private property.

We wish to urge the parents of both white and Negro students who participated in today's sit-in demonstration to urge upon these young people that such actions are not in the community interest. . . .²⁶ [W]e want everyone to fully understand that the police department and its personnel is ready and able to enforce the laws of the city of New Orleans and the state of Louisiana.²⁷

Just three days later, Mayor deLesseps Story Morrison delivered his own highly publicized statement “unequivocal[ly] . . . condemning [the protests] and demanding [their] cessation”:²⁸

I have today directed the superintendent of police that no additional sit-in demonstrations or so-called peaceful picketing outside retail stores by sit-in demonstrators or their sympathizers will be permitted.

The police department, in my judgment, has handled the initial sit-in demonstration Friday and the follow-up picketing activity Saturday in an efficient and creditable manner. This is in keeping with the oft-announced policy of the New Orleans city government that peace and order in our city will be preserved.

We wish to urge the parents of both white and Negro students who participated in today's sit-in demonstration to urge upon these young people that such actions are not in the community interest.

Finally, we want everyone to fully understand that the police department and its personnel is [sic] ready and able to enforce the laws of the city of New Orleans and the state of Louisiana.

Lombard v. Louisiana, 373 U.S. 267, 270 n.2 (1963).

26. The sit-in protests that swept the South in 1960 challenged not only institutional racism and segregation, but also the region's economic security. The public consciousness of the potential economic threat resulting from the sit-ins is noted in a 1960 *New York Times* article by Claude Sitton:

John H. Wheeler, a Negro lawyer who heads a Durham bank, said that the only difference among Negroes concerned the “when” and “how” of the attack on segregation.

He contended that the question was whether the South would grant the minority race full citizenship status or commit economic suicide by refusing to do so.

The Durham Committee on Negro Affairs, which includes persons from many economic levels, pointed out in a statement that white officials had asked Negro leaders to stop the student demonstrations.

“It is our opinion,” the statement said, “that instead of expressing disapproval, we have an obligation to support any peaceful movement which seeks to remove from the customs of our beloved Southland those unfair practices based upon race and color which have for so long a time been recognized as a stigma on our way of life and stumbling block to social and economic progress of the region.”

CARSON ET AL., *supra* note 14, at 438.

27. *Lombard*, 373 U.S. at 270. In 1960, neither New Orleans nor the State of Louisiana had any laws mandating segregation, however the practice was customary, widespread, and deeply entrenched. *See id.* at 268, 273–74.
28. *Id.* at 271.

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I have carefully reviewed the reports of these two initial demonstrations by a small group of misguided white and Negro students, or former students. It is my considered opinion that regardless of the avowed purpose or intent of the participants, the effect of such demonstrations is not in the public interest of this community.

Act 70 of the 1960 Legislative session redefines disturbing the peace to include “the commission of any act as would foreseeably disturb or alarm the public.”

Act 70 also provides that persons who seek to prevent prospective customers from entering private premises to transact business shall be guilty of disorderly conduct and disturbing the peace.

Act 80—obstructing public passages—provides that “no person shall wilfully obstruct the free, convenient, and normal use of any public sidewalk, street, highway, road, bridge, alley or other passage way or the entrance, corridor or passage of any public building, structure, . . . or passage thereon or therein.”

It is my determination that the community interest, the public safety, and the economic welfare of this city require that such demonstrations cease and that henceforth they be prohibited by the police department.²⁹

Lombard and the New Orleans CORE³⁰ were undeterred,³¹ and the events that followed would find Lombard and his companions fighting Louisiana’s *de facto* segregation in a legal battle going all the way to the U.S. Supreme Court.³²

29. *Id.* at n.3 (citations omitted).

30. CORE members were aware of the high stakes involved in conducting their direct action. According to one member: “The chapter had a deep Gandhian philosophy. . . . All the members were prepared to die if necessary. In fact we spent hours talking about Gandhian philosophy and willingness to give our lives. We would not eat and talk for days as a means of acquiring discipline.” MEIER & RUDWICK, *supra* note 10, at 116. This ethos would evolve into the “Jail, No Bail” strategy. See *PBS NewsHour: “Jail, No Bail” Idea Stymied Cities’ Profiting from Civil Rights Protesters* (PBS television broadcast Mar. 7, 2011), available at http://www.pbs.org/newshour/bb/social_issues-jan-june11-jail_03-07/ (containing an excerpt from *Carolina Stories: Jail No Bail* (ETV South Carolina television broadcast), available at http://www.sctev.org/index.php/carolina_stories/show/jail_no_bail/).

31. At a mass meeting in September 1960 following the sit-ins in New Orleans, Lombard stated:

[The arrests] have only strengthened our determination to persevere, in our fight for liberty and equality. We believe that all men are created equal and endowed by their Creator with certain unalienable rights. . . . As chairman of New Orleans CORE, I spent six and a half days in jail to let the nation and world know, that we the citizens of New Orleans are demanding our freedom and are willing to pay the price. No man can imprison the desire to be free. I speak with confidence when I say, not even the threat of jail shall silence the cry of the Negro for liberation from the imprisonment of segregation.

MEIER & RUDWICK, *supra* note 10, at 116.

32. *Lombard*, 373 U.S. 267.

The facts are straightforward. On September 17, 1960, four students³³—all members of CORE—took seats at a lunch counter reserved for whites at McCrory’s five-and-dime store on Canal Street in New Orleans. As the court record reflects, the manager of the store told them that they could not be served at the white counter and directed them to the “colored counter” at the rear of the store.³⁴ When the students failed to respond, he turned off the lights, removed the unoccupied stools, and called the students attention to a sign reading, “The Counter is Closed.” He also called the police. When the police arrived, the manager again told the students to leave the counter, and when they did not respond, the police chief ordered them to move. When Lombard and his companions refused, the police arrested them. The students were charged with violating Louisiana’s criminal mischief statute,³⁵ under which they were subsequently tried and convicted.³⁶ Lombard and the others appealed their conviction, which was affirmed in 1961 by the Louisiana Supreme Court in *State v. Goldfinch*.³⁷

In *Goldfinch*, the defendants argued that the criminal mischief statute was unconstitutional as applied because it denied “[Negroes] the guarantees afforded by the due process and equal protection clauses of the Constitution of the United States and the Constitution of the State of Louisiana, particularly that afforded by the Fourteenth Amendment to the Constitution of the United States.”³⁸ Justice Frank

33. The protesters included Rudy Lombard, Oretha Castle and Cecil Carter (a black woman and man, respectively), and Sydney “Lanny” Goldfinch, a white man and named defendant in the ensuing state court cases. See *A House Divided Teaching Guide*, S. INST. EDUC. & RES., http://www.southerninstitute.info/civil_rights_education/divided8.html (last visited, Jan. 15, 2015).

34. *Lombard*, 373 U.S. at 272.

35. See *supra* text accompanying note 29 for the relevant portions of the Louisiana’s criminal mischief statute, which were referenced by Mayor Morrison in his public address.

36. Lombard secured the services of three young black lawyers—Robert Collins, Nils Douglas, and Lolis Edward Elie—to represent the arrested CORE members at trial. These three attorneys were extraordinary figures in their own right; their stories could easily be the subject of an article of their own.

Elie graduated from Loyola University School of Law in 1959 where he and Douglas were classmates. Shortly thereafter, they met Collins, who graduated from Louisiana State University Law School in 1954. Elie had been the lawyer for the Consumers’ League of New Orleans, a group that was boycotting downtown New Orleans department stores for refusing to employ blacks. Elie said that they were “emulating the effort of Adam Clayton Powell in New York City regarding stores on 125th Street in Harlem.” Telephone interview with Lolis Edward Elie (June 11, 2014). Before this case, none of the three were able to earn a living as attorneys because of their race, and each had other jobs to sustain him. National CORE developed a close relationship with these attorneys, who ultimately formed the firm Collins, Douglas, and Elie (a major Louisiana civil rights practice) and went on to handle most of CORE’s legal work in Louisiana. On appeal to the Louisiana State Supreme Court, CORE members hired Jack Nelson, an experienced white lawyer to join the team. *Id.*; MEIER & RUDWICK, *supra* note 10, at 115. When the case went to the U.S. Supreme Court, Nelson was the only named attorney for the petitioners. *Lombard*, 373 U.S. at 267. For more information about Collins, Douglas, and Elie, including interviews recorded by Robert Penn Warren for his book *Who Speaks for the Negro?*, see *Robert Collins, Nils Douglas, and Lolis Elie, WHO SPEAKS FOR THE NEGRO?*, <http://whospeaks.library.vanderbilt.edu/interview/robert-collins-nils-douglas-and-lolis-elie> (last visited Jan. 15, 2015).

37. 132 So.2d 860 (La. 1961), *rev’d sub nom*, *Lombard*, 373 U.S. 267.

38. *Id.* at 963.

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Summers found the defendants' argument unavailing, quickly framing the issue in terms of the state action doctrine:³⁹

There should be no doubt, and none remains in our minds, about the applicability of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the state rather than private persons.

Since the decision in the Civil Rights Cases,⁴⁰ it has been unequivocally understood that the Fourteenth Amendment covers state action and not individual action.

....

We are, therefore, called upon to determine whether the enactment of the questioned statute is such action by the State as is prohibited by the Fourteenth Amendment.⁴¹

Summers reasoned that because the law was facially neutral and made no classification based on race, the statute's constitutionality was presumed.⁴²

Following *Goldfinch*, the students applied to the U.S. Supreme Court for a writ of certiorari, which was granted on June 25, 1962. The Court held oral arguments for *Lombard v. Louisiana* on November 5 and 6, 1962, and delivered its opinion—along with four others involving sit-ins in various jurisdictions—reversing the Supreme Court of Louisiana on May 20, 1963.⁴³ The Court's holding in *Lombard* turned on whether the statements made by Superintendent Giarrusso and Mayor Morrison could be interpreted as prohibiting restaurant owners from desegregating their lunch

39. The state action doctrine refers to the application of the Constitution's "protections of individual liberties and its requirement for equal protection" solely to state actors (local, state, and federal government and their officials), as opposed to private parties and individuals. See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 548–51 (4th ed. 2013). The state action doctrine was first articulated by the Court in *The Civil Rights Cases*, 109 U.S. 3 (1883), in which the Court declared the Civil Rights Act of 1875, which prohibited private discrimination based on race and color, unconstitutional. *Id.* The state action requirement became a basic tenet of constitutional law and remains good law today. Over time, however, the scope and boundaries of the state action doctrine—particularly in terms of whether, and under what circumstances, private action can be restricted by the Constitution—have shifted. Two exceptions have emerged to the blanket rule that "the Constitution offers no protection against private wrongs no matter how discriminatory or how much they infringe on fundamental rights." See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 521, 529–51 (4th ed. 2013) (discussing the public funding exception and the entanglement exception). The result of these exceptions is that the jurisprudence surrounding the doctrine is rife with inconsistencies and seemingly arbitrary distinctions—"a conceptual disaster area." *Id.* at 521. The majority opinion in *Lombard* overruled *Goldfinch* by interpreting the public statements made by New Orleans officials as constituting state action tantamount to an official state endorsement of segregation in violation of the Fourteenth Amendment. *Lombard*, 373 U.S. 267.

40. 109 U.S. 3 (1883) (citation omitted).

41. *Goldfinch*, 132 So.2d at 862.

42. *Id.* at 862–63.

43. Oral Argument, *Lombard v. Louisiana*, 373 U.S. 267 (1963) (No. 58), available at http://www.oyez.org/cases/1960-1969/1962/1962_58 (last visited Jan. 15, 2015).

counters.⁴⁴ Based on the Court's reasoning in *Ex Parte Commonwealth of Virginia*,⁴⁵ Chief Justice Warren stated that the city officials' public statements carried the same weight as a public ordinance "[making] it unlawful for owners or managers of restaurants to seat whites and Negroes together."⁴⁶ However, evidence of the coercive effect of the statements "was not fully developed" because it was excluded by the trial judge.⁴⁷ Unlike in *Peterson v. City of Greenville*,⁴⁸ the companion case to *Lombard*, there was no official ordinance in place in New Orleans mandating segregated lunch counters, but the coercive effect of the officials' statements were deemed sufficient to constitute state action requiring unequal application of the laws in violation of the Fourteenth Amendment. More importantly, the Court held:

As we interpret the New Orleans city officials' statements, they here determined that the city would not permit Negroes to seek desegregated service in restaurants. Consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct. . . . The official command here was to direct continuance of segregated service in restaurants, and to prohibit any conduct directed towards its discontinuance Therefore here, as in *Peterson*, these convictions, commanded as they were by the voice of the State directing segregated service at the restaurant, cannot stand.⁴⁹

Thus, *Lombard* presented a unique application of the state action doctrine,⁵⁰ exemplifying the Warren Court's sympathetic temperament in confronting civil rights cases.⁵¹ The Court interpreted the official statements as not only enforcing

44. *Lombard*, 373 U.S. at 270–74.

45. 100 U.S. 339 (1879) ("Whoever, by virtue of public position under a State government . . . denies or takes away the equal protection of the laws, violates the [Fourteenth Amendment]; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State.").

46. *Lombard*, 373 U.S. at 272–73 (employing the state action doctrine as integral to this case). The decision notes there was evidence that the store manager attempted to eject the plaintiffs in order to adhere to the city official's directives.

47. *Id.* at 273. At oral argument, there was discussion of evidence, offered at trial but barred by the trial court judge, of collusion between local business owners and New Orleans police in creating a strategy to handle the sit-ins. Oral Argument at 21:34, *Lombard v. Louisiana*, 373 U.S. 267 (1963) (No. 58), available at http://www.oyez.org/cases/1960-1969/1962/1962_58 (last visited Jan. 15, 2015).

48. 373 U.S. 244 (1963). The *Peterson* decision was released along with *Lombard* and three other sit-in cases on May 20, 1963. *Peterson* differed from *Lombard* in that Greenville, South Carolina had instituted a city ordinance mandating the segregation of restaurant facilities, therefore implicating the state action doctrine in a much more straightforward manner than in *Lombard*.

49. *Lombard*, 373 U.S. at 273–74.

50. The uniqueness of the decision concerns the Court's interpretation of the facts resulting in a somewhat novel application of the law. In his concurring opinion, however, Justice William O. Douglas offered a more radical line of reasoning based on public accommodations and the entanglement exception to the state action doctrine. See *id.* at 274–83 (Douglas, J., concurring).

51. Chief Justice Warren, appointed by President Dwight D. Eisenhower in 1953 following the sudden death of Chief Justice Fred M. Vinson, played an integral role in shifting the Court to a more progressive stance on segregation and civil rights generally. *Brown*, argued on October 13, 1953 and decided on May 17, 1954, immediately tested the influence that the newly appointed chief justice would wield over the Court

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segregation *de jure*, but also prohibiting *any* effort to end the practice. The fact that the plaintiffs were ejected from and arrested for trespass in a privately owned store was not outcome determinative—instead, the private owners, acting in compliance with state policy, were treated as agents of the state due to the coercive effect of the official statements.

Lombard’s activism did not end with the sit-in or the litigation that followed—advocacy for the black community and challenging discrimination has been central to all his endeavors. While continuing his work with national CORE, Lombard went on to pursue a graduate degree. He was admitted to Harvard University, the University of Minnesota, and Syracuse University. Lombard enrolled at Syracuse rather than Harvard, in part due to the erroneous assumption that being in the state of New York would make it easier to get to New York City and its jazz clubs.

When he arrived in Syracuse, Lombard sought housing but soon found that there were no rooms available for blacks. Once again, he took action. With support of the dean of the university’s Maxwell School of Citizenship and Public Affairs, Lombard assembled a group of black students to oppose the city’s landlords who refused to rent to black students. Staying true to the spirit of New Orleans CORE, the campaign focused on “bottom up” organizing and championed the “primacy of unnamed people.”⁵² In the course of this campaign, Lombard met and befriended Professor George Alvin Wiley, a black chemist who was the best-funded chemistry professor at the university.⁵³ Wiley, Lombard, and another Syracuse student expanded Lombard’s fair-housing campaign and organized a largely successful project at Syracuse University targeting housing discrimination. Lombard also worked with the Syracuse football players to challenge segregation in sports. Enduring enormous

in shaping modern civil rights law. Venerated constitutional law professor Erwin Chemerinsky notes the importance of Warren’s role in the *Brown* decision:

According to Justice William Douglas’s autobiography, had the Supreme Court ruled [on *Brown*] in 1953, the decision would have been five to four to affirm *Plessy v. Ferguson* and the separate but equal doctrine:

“When the cases had been argued in December of 1952, only four of us—Minton, Burton, Black, and myself—felt that segregation was unconstitutional. . . . It was clear that if a decision had been reached in the 1952 Term, we would have had five saying that separate but equal schools were constitutional, that separate but unequal schools were not constitutional, and that the remedy was to give the states time to make the two systems of schools equal.”

ERWIN CHEMEKINSKY, *CONSTITUTIONAL LAW* 762 (4th ed. 2013). Following his appointment to the Court, “Chief Justice Warren persuaded all of the justices to join a unanimous decision holding that separate but equal was impermissible in the realm of public education.” *Id.*

52. Some hallmarks of CORE were its focus on direct action, grass-roots organizing, and the importance of ordinary people in the struggle for civil rights.
53. Wiley would later become the associate national director of CORE. When James Farmer left CORE, Wiley sought the position of national director of CORE, but was defeated by Floyd McKissick, who took CORE in a more “black nationalist” direction; Wiley went on to found the National Welfare Rights Organization. Wiley died in a boating accident in 1973. His daughter, Maya Wiley, was a leading policy advocate in New York City and currently serves as Counsel to Mayor Bill de Blasio. Wiley’s son, Dan, is on the staff of Congresswoman Nydia Velázquez.

pushback from coaches, Lombard organized the players to oppose schools they played against that refused to field black players, and organized boycotts of schools with segregated stadiums. During the course of this project, he met Billy Hunter (at the time a football player for Syracuse) who later became a United States Attorney for Northern California, and then head of the NBA Players Association. As head of the union, Hunter enlisted Lombard's services as the Players Association's financial advisor.

In the late 1960s, Lombard returned to Syracuse University to study at Maxwell School of Citizenship and Public Affairs. In 1970, Lombard received his Ph.D. in social science from Syracuse and wrote a dissertation on community involvement in Mobilization for Youth—the hallmark New York City anti-poverty organization.⁵⁴ After leaving Syracuse, he went on to found a drug program at Howard University.⁵⁵ In 1975, Lombard returned to New Orleans and helped organize the Neighborhood Development Foundation—an organization focused on assisting first-time homebuyers (mostly black) in New Orleans.⁵⁶ In the early 1980s, Lombard was instrumental in establishing Quantum/Gabelli, an asset management firm that, among other things, advocated for the involvement of minority money managers in the operations of public and private-sector retirement systems and educated minority trustees on public pension boards in financial literacy.⁵⁷ In 1986, Lombard challenged then-New Orleans Mayor Marc Morial, who was seeking his third term. Lombard lost. He later moved to New York and worked with Alan Gartner in the New York

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54. Author Interviews, *supra* note 8. *See generally*, Rudolph Joseph Lombard, Achieving “Maximum Feasible Participation” of the Poor in Anti-Poverty Elections (1970) (unpublished Ph.D. dissertation, Syracuse University) (on file with Alan Gartner).
55. Author Interviews, *supra* note 8. From 1970 to 1974, Lombard was the founder and executive director of the Howard University Institute on Drug Abuse and Addiction. In this capacity, Lombard directed a staff of community organizers who worked with drug addicts receiving care at the emergency room of Howard University's Freedmen's Hospital, as well as designed and implemented drug addiction education and prevention programs in Washington D.C. *Id.*
56. *Id.* Lombard returned to New Orleans in 1975, at which time his focus shifted to urban development and cultural projects. He founded the Claiborne Avenue Design Team, a group of urban planners, architects, engineers, and social scientists who created a master plan for the redevelopment of an eight-mile area that had fallen into disrepair after an interstate highway was constructed nearby. Their work took into account the exceptional contributions of African Americans to the uniqueness of New Orleans culture, including architecture, carnival traditions, and cuisine. Lombard was also an exquisite chef. He co-authored a cookbook, *Creole Feast*, which focused on New Orleans cuisine that featured not only family recipes, but those of prominent African American chefs from the region's most acclaimed restaurants. *See generally* NATHANIEL BURTON & RUDY LOMBARD, *CREOLE FEAST* (1978). He was also co-founder and first board president of the Neighborhood Development Foundation (NDF), which continues its work today. Since its founding in 1986, the NDF has assisted thousands of families in becoming homeowners each year. *See generally About NDF*, NDF NEW ORLEANS, http://ndf-neworleans.org/?page_id=22 (last visited Jan. 15, 2015).
57. Author Interviews, *supra* note 8. Lombard would continue his work with Quantum/Gabelli throughout the '80s, '90s, and early 2000s.

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City Districting Commission as an urban anthropologist. According to Lombard, it was the “[b]est job [he] ever had.”⁵⁸

In 2003, Lombard was diagnosed with prostate cancer and traveled around the country seeking the opinions of urologists, surgeons, oncologists, and prostate cancer survivors regarding his condition, and ultimately went to Germany to seek treatment. Following his initial battle with cancer, he organized a number of cancer survivor support groups.⁵⁹ This led him to Northwestern University, where he received a federal grant to start a program at NorthShore University HealthSystem to support black men suffering from prostate cancer—a program in which he participated until ultimately succumbing to the disease.⁶⁰

REFLECTIONS

Alan Gartner

It is hard to remember exactly how I felt over a half century ago, when so many now-historic events were taking place. With regard to Rudy Lombard, I can clearly recollect how different we were from each other, and yet how comfortable we were together.

He, a black man from the segregated South and a graduate of an all-black parochial school; I, a Northerner and a graduate of a small, adamantly secular progressive private school “integrated” with one black student in each grade, except in my class, where there were none—balanced by two in the following grade. He experienced the lash of race and class, while I learned about it in school, at college, and most powerfully at Myles Horton’s Highlander Folk School in Monteagle, Tennessee—the rare place in the South of the 1960s where whites and blacks could meet and work together.

The CORE campaign in Louisiana began in early 1963, in the parishes of East and West Feliciana, just west of New Orleans. With only the names of a couple of local blacks who said they wished to register to vote, a half dozen or so CORE workers went into the countryside. The sheriffs and their deputies were incensed by the actions of the CORE workers. Rudy Lombard was one of those CORE “agitators.” He’d driven alone into West Feliciana Parish to find and register voters, which ended up in a nightmare of shotguns and hatred. He and his colleagues survived beatings and arrests as the CORE workers probed north into additional

58. *Id.*

59. *Id.* One such group is the Second Opinion Society (SOS), a group of African American cancer survivors based in Atlanta, Georgia. SOS has evolved into a broad network of survivors and support groups and works closely with the Clark Atlanta University Center for Cancer Research and Therapeutic Development, headed by Dr. Shafiq Khan, Ph.D.

60. *Id.* Lombard was active in the Northwestern University SPORE, a division of The Lurie Cancer Center’s Specialized Programs of Research Excellence. In his capacity as a SPORE minority supplement grantee, Lombard worked closely with a number of Northwestern faculty including Dr. David Victorson, Ph.D., a psychologist and assistant professor in the Department of Medical Social Sciences of the Northwestern University’s Feinberg School of Medicine, and Dr. Chung Lee, Ph.D., emeritus professor and chairman of the Department of Urological Research, also at the Feinberg School of Medicine.

parishes. As CORE's most talented writer, Val Coleman, said of him, "Rudy was a type-cast good guy—a brilliant, black-bearded longshoreman and Xavier University graduate. He later ran for mayor of New Orleans after he personally had banged open the doors of Louisiana's politics."

Rudy and I worked together nearly always on the same side in the struggles of the Movement, and beyond; in the academy—he at Michigan, and I at Harvard; in city politics—he in New Orleans, and I in New York City; in professional work—he as an urban demographer, and I as a dabbler in city politics and a city official; and enjoyed together in the pleasures of living—he cooked Dorothy's and my wedding dinner.

In 1960, he was already a hero. While publication of this article was pending, Rudy lost his battle with prostate cancer on Saturday, December 13, 2014. Rudy was more than a colleague and a friend to me. I considered him my family. And we called each other "brother."