

Long Road to Justice

The Civil Rights Division at 50



September 2007

Leadership Conference on Civil Rights Education Fund

www.reclaimcivilrights.org

ACKNOWLEDGEMENTS

Long Road to Justice: The Civil Rights Division at 50, is an initiative of the Leadership Conference on Civil Rights Education Fund's Civil Rights Enforcement Project and the ReclaimCivilRights.org campaign, which are directed by Julie Fernandes, the Leadership Conference's Senior Policy Analyst and Senior Counsel. This campaign is part of the work of LCCREF's Public Policy Department directed by Nancy Zirkin. In releasing this report, our goals are to educate the public on the importance of the Civil Rights Division in promoting equality and equal opportunity for all and to draw attention to contemporary challenges facing the Division moving forward.

We would especially like to thank Richard Jerome, the author of the report. Thanks are also due to members of the LCCR coalition who provided substantive input, useful advice, and counsel throughout the process: Michael Foreman and Sarah Crawford, Lawyers' Committee for Civil Rights Under Law; Debo Adegbile and Kristen Clarke, NAACP Legal Defense and Educational Fund; Anita Earls, UNC Center for Civil Rights; Anne Sommers and Andrew J. Imparato, American Association of People with Disabilities; Lisa Rice, National Fair Housing Alliance; and Karen Narasaki, Asian American Justice Center.

Our thanks also go to LCCREF staff who provided invaluable assistance in the editing, design, layout, and finalization of the report: Katie McCown, Policy Associate; Tyler Lewis, Communications Associate and Editor; Karen DeWitt, Communications Director; and Juan Carlos Ibarra, Communications Associate.

The authors and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.

The substance and recommendations of the work are dedicated to the career men and women of the Civil Rights Division. For fifty years, they have worked tirelessly to help our nation meet its constitutional ideals of equal justice.

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Foreword

The American people have traditionally shown high national regard for civil rights...But the need for leadership is pressing. That leadership is available in the national government and it should be used.

President Truman's Committee on Civil Rights, To Secure These Rights, 1947¹

Momentum for the civil rights struggle has historically emerged from within the people and communities of this nation, but the federal government continually plays a central role in determining the outcome of this struggle. When Congress authorized the creation of the Civil Rights Division at the Department of Justice in 1957, the federal government made a formal and ongoing promise to defend the civil rights of its people. It has honored this commitment over the last fifty years by enforcing anti-discrimination laws and by removing discriminatory provisions from its own policies and programs. In so doing, the Division has strived to reflect some of America's highest democratic ideals and aspirations: equal treatment and equal justice under the law.

We feel honored to have worked with the lawyers and professional staff of the Division during the time that we served as Assistant Attorneys General. We have experienced a strong bipartisan national consensus over the years regarding the need for federal civil rights protections, and we take great pride in the Division's response. It is through the Division's institutional knowledge and dedication to the promise of civil rights that we have been able to affect substantial and continued change. What began as a mission to strengthen the Department's resolve to end racial segregation and Black disenfranchisement in the South, has expanded over the years to include protections from discrimination on the basis of ethnicity, sex, religion, disability, and national origin.

It remains clear that the work of the Civil Rights Division has the bipartisan support of both Houses of Congress and of the American people. This bipartisan approach must continue, and the Civil Rights Division must not falter in pursuing strong enforcement efforts and relief. It was only through the resources of the federal government, and the credibility of the Department of Justice, that many of the more difficult and complicated cases were won.

Though questions regarding the Division's credibility and its precise civil rights agenda may arise throughout different administrations, the Division's fundamental commitment to equal justice and opportunity must remain steadfast. As President Truman's Committee for Civil Rights heralded sixty years ago, it must be the imperative of the federal government to enforce the law and to ensure fair and impartial administration of justice for all Americans. Today, which

¹ President Truman's Committee on Civil Rights, *To Secure These Rights: The Report of the President's Committee on Civil Rights* (1947), 100.

marks fifty years in the life of the Civil Rights Division, we commend its achievements and assess its limitations. We ask that Congress and the American people join us today in renewing our commitment to civil rights enforcement.

Drew Days

Assistant Attorney General
Civil Rights Division
1977-1980

John Dunne

Assistant Attorney General
Civil Rights Division
1990-1993

Deval Patrick

Assistant Attorney General
Civil Rights Division
1994-1997

Bill Lann Lee

Assistant Attorney General
Civil Rights Division
1997-2001

INTRODUCTION

Until the late nineteenth century, African Americans in the United States, particularly in the American South were regarded, both politically and socially, as second-class citizens. Though the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution had been ratified, they were not being implemented with the full force of the law. Moreover, the courts and the federal government had nullified much of the Reconstruction-era Civil Rights Acts.²

In 1939, the Justice Department established a Civil Rights Section within its Criminal Division for criminal prosecutions of peonage and involuntary servitude cases, as well as for prosecutions under the remaining Civil Rights Acts.³ The Section was given limited authority and a small staff. Fighting a World War against Nazism, however, made it increasingly difficult for the United States to defend racial discrimination within its own borders, especially while African-American troops were committed to the struggle for anti-discrimination abroad. The return of Black veterans to the home front provided local leadership and a political framework for civil rights protest that the federal government could no longer ignore.

President Truman established a Committee on Civil Rights in 1946. Its 1947 report, *To Secure These Rights*, recommended comprehensive civil rights legislation as well as the creation of a Civil Rights Division within the Justice Department.⁴ Although President Eisenhower did not embrace civil rights as a political priority within the Administration, Attorney General Herbert Brownell advocated additional governmental efforts. Brownell collaborated with civil rights organizations, including the Leadership Conference on Civil Rights, to propose a civil rights bill that would require both civil remedies and criminal penalties for civil rights violations.

On September 7, 1957, President Dwight Eisenhower signed the Civil Rights Act of 1957, the first civil rights legislation since Reconstruction. While the Act could not implement everything necessary to protect the political, social, and economic rights of African Americans, it did authorize three important features: a position for an Assistant Attorney General for Civil Rights within the Department of

² The Justice Department was limited to criminal prosecutions under these statutes. From the Civil War to 1940, the Justice Department brought only two prosecutions for racial violence, one in 1882 and one in 1911.

³ In addition to civil rights cases, the Civil Rights Section was also responsible for administering the criminal provisions of the Fair Labor Standards Act, the Safety Appliance Act, the Hatch Act, and certain other statutes. It also processed most of the mail received by the federal government relating to civil rights issues.

⁴ The Truman Committee believed that increasing the level of federal civil rights enforcement from a Section within the Criminal Division to its own separate Division “would give the federal civil rights enforcement program prestige, power, and efficiency that it now lacks.” President Truman’s Committee on Civil Rights, *To Secure These Rights*, 152.

Justice; the creation of the United States Commission on Civil Rights; and the use of civil suits against voting discrimination.

On December 9, 1957, Attorney General William P. Rogers signed AG Order No. 155-57, formally establishing the Civil Rights Division of the Department of Justice. In the fifty years since its creation, the Division has been instrumental in promoting equal justice for all Americans.

The following report discusses the efforts of the Civil Rights Division over the past fifty years to eliminate discrimination in the areas of education, employment, housing, voting, criminal justice, and public accommodations. We provide the historical context for the Division's involvement in each area, outline the Division's landmark achievements, and assess the challenges it currently faces in securing equal and impartial administration of justice under the law. Finally, we provide recommendations for the Division to consider as it sets out to achieve its mission of effective civil rights enforcement over the next fifty years. We invite the Division, Congress, and the public to examine and reflect on this report as a piece of an ongoing dialogue regarding how best to secure and protect the civil rights of the American people.

I. VOTING RIGHTS

This bill will establish a simple, uniform standard which cannot be used, however ingenious the effort, to flout our Constitution. It will provide for citizens to be registered by officials of the United States Government if the State officials refuse to register them. It will eliminate tedious, unnecessary lawsuits which delay the right to vote. Finally, this legislation will ensure that properly registered individuals are not prohibited from voting.

President Lyndon Baines Johnson. 1965

In 2004 and 2005, Secretary of State Condoleezza Rice was ranked the most powerful woman in the world by *Forbes* magazine. The first African-American woman and the second woman to head the United States State Department, Secretary Rice's race and gender are always noted but rarely marveled at. A Phi Beta Kappa at age 19, with a doctorate degree in the politics of the former Soviet Union, she was the first female, first minority, and youngest Provost at Stanford University before serving in President George H.W. Bush's administration as Soviet and East European advisor. She served the current President Bush first as National Security Advisor before becoming Secretary of State.

People may disagree with her policies, but no one questions her legitimacy.

But fifty years ago it would have been impossible for her to hold the position she holds today. African Americans were second class citizens. And the franchise that once empowered them was beyond reach.

Secretary Rice's parents, like the vast majority of African Americans living in the South during the middle of the 20th century, were unable to vote in her hometown of Birmingham, Alabama. Jim Crow laws passed by states after the Civil War took the vote from African Americans and imposed *de jure* segregation that stripped them of most of their citizenship rights. In 1900, of the nearly 200,000 African-American males of voting age in Alabama, only 3,000 were registered to vote. The next year, the state constitution officially barred Blacks from voting. Those who tried to register to vote faced formidable hurdles. Poll taxes. Impossible literacy tests. Economic retribution, physical intimidation, even death. All aimed at keeping suffrage – and the rights emanating from the voting booth – from African Americans.

Americans born after the civil rights era of the 1960s, may find it difficult to imagine that there was ever a period when advocating the right to vote for African Americans provoked hostility and even violence. Yet in 1963, in Alabama, and throughout the South, it did. That was the year Birmingham Police Commissioner Eugene "Bull" Connor used police dogs and ordered fire hoses opened on hundreds of young, non-violent African Americans demonstrating for their civil rights, literally hosing down streets with Black children. Later that year, members of the Ku Klux Klan planted a dynamite bomb in the basement of Birmingham's

16th Street Baptist Church, a center for those resisting segregation and demanding the vote. The explosion killed four young girls, including one of Secretary Rice's classmates – 11-year old Denise McNair.

Far from intimidating the black community and its many supporters, the deaths of innocent children shocked the nation and the world and helped push passage of the Civil Rights Act of 1964. The Civil Rights Act of 1964 helped end segregation throughout the United States. But it was the passage of the Voting Rights Act in 1965 that transformed the political landscape of the South and our nation.

In both the years leading up to passage of the Voting Rights Act, and for many years afterwards, the Civil Rights Division of the Department of Justice has played a critical role in our nation's work to protect the right to vote.

From 1960 to 1964, Division attorneys traveled throughout the South to investigate voting discrimination and compiled overwhelming evidence of inequity. In a county-by-county and state-by-state campaign in Alabama, Georgia, Louisiana and Mississippi, the Division challenged voting discrimination in the federal courts, where it often met with hostile judges, defiant state and local officials, and widespread violence and intimidation of Black applicants for registration. Even when the Division obtained favorable rulings from some federal judges, the dynamics of state-sponsored suppression of Black registration did not change. Some of the particular discriminatory voting practices being challenged were prohibited, but Black registration did not significantly increase.

In addition to cases against individual counties, the Division brought statewide cases against Louisiana and Mississippi in 1961 and 1962, respectively, arguing that the state constitutions and statutes were designed and had the effect of preventing African Americans from voting in significant numbers. In the Louisiana case, District Judge John Minor Wisdom ruled that parishes could not give Blacks any tests more onerous than those given to Whites in the previous period of discrimination (which generally meant no test at all).⁵ The Supreme Court upheld the decision, ruling that a court not only has "the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future."⁶

In 1965, shortly after the Selma to Montgomery civil rights march, when the world watched on television as the police beat marchers crossing the Edmund Pettus Bridge outside of Selma, Congress passed the Voting Rights Act. Certainly the Act would not have been passed without the stirring words of Martin Luther King, Jr., the daily struggles of the civil rights movement, and the congressional arm-twisting of President Johnson. But, it was also the Civil Rights Division's early cases under the 1957 and 1960 Civil Rights Acts that paved the way, and

⁵ *United States. v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963), aff'd 380 U.S. 145 (1965)

⁶ *United States. v. Louisiana*, 380 U.S. 145 (1965)

ultimately shaped the contents of the 1965 Voting Rights Act.⁷ The limits of the earlier Acts and the inability of the Division's case-by-case litigation to make the needed changes pushed Congress to implement more rigorous, and in some ways, ground-breaking provisions. Civil Rights Division lawyers, particularly Harold Greene (later judge of the D.C. Circuit), drafted the initial proposal and language that was included in the final bill as passed.

On August 6, 1965, the day that the President signed the Voting Rights Act of 1965, he directed the Attorney General to file suit the very next day against the Mississippi poll tax.⁸ That same day, the Attorney General sent letters to every county registrar in the states covered by the Voting Rights Act, noting the Act's suspension of tests or devices for voting. It was these types of state provisions – for example requiring Black applicants for voting registration in Mississippi to copy and interpret provisions of the state constitution to the satisfaction of the White registrars – that allowed the county registrars to summarily deny registration to qualified Black residents. The following week, the Civil Rights Division brought poll tax suits against Texas, Alabama and Virginia, and federal examiners were working in 14 counties registering voters. In that first week, over 15,000 African Americans were registered by federal examiners, and approximately 42,000 new African-American voters were registered in the first month after the Voting Rights Act took effect.⁹

In 1968, after nearly 70 years of disenfranchisement, Black voters elected the first African American to the Birmingham city council, attorney Arthur Shores. There appeared to be a new faith that there was an integrated future for the Deep South, but it didn't come naturally.

In 1971, three years after Shores' election, the Civil Rights Division had to step in and file suit against Jefferson County when it attempted to pass a bill that would have diluted the black voting power that had brought Shores to office. The purpose of the bill, sponsored by Representative Bob Gafford, a long and ardent segregationist, was solely, according to the *Birmingham News*, "to minimize chances of election of Negroes to the council by forcing them to run head-to-head with White candidates for specific places."

One of the central features of the Voting Rights Act is Section 5, the preclearance requirement.¹⁰ While this part of the Act was not an initial focus of

⁷ See Landsberg, Brian K. *Free at Last to Vote: The Alabama Origins of the 1965 Voting Rights Act*. Lawrence: University Press of Kansas, 2007.

⁸ Twice earlier, in 1937 and in 1951, the Supreme Court had upheld the poll tax as constitutional. It overruled these cases in 1965 in *Harper v. Virginia*, 383 U.S. 663 (1965).

⁹ In the first year after the Act was enacted, the Attorney General designated 43 counties for examiners, and 23 counties for observers. As of June 30, 1966, over 117,000 African Americans were registered by federal examiners in the four states where examiners operated – Alabama, Mississippi, Louisiana, and South Carolina.

¹⁰ Section 5 requires that certain covered jurisdictions submit for review to the Attorney General or the District Court of the District of Columbia any change to voting practices or procedures.

the Division, in 1969 the Supreme Court ruled that all voting changes, including redistricting, reapportionment, and other methods of election changes were subject to Section 5 preclearance.¹¹ From that point on, the Voting Section's objections to changes that had a discriminatory purpose or effect were a powerful lever in prodding many jurisdictions to abandon at-large election systems in favor of single-member districts, and other practices such as discriminatory annexations and gerrymandering.

Within 10 years of passing the Voting Rights Act, Black registration in the Deep South had increased by over one million persons, and the number of Black elected officials in the region had increased from almost zero to 963.¹² There were still discriminatory barriers to making those votes effective. However, in 1973, the Supreme Court ruled that "vote dilution" was prohibited by the Fourteenth Amendment.¹³ While the Court later restricted constitutional challenges to intentional discrimination, Congress amended the Voting Rights Act in 1982 to re-establish the discriminatory "results" test as the standard for bringing a voting rights challenge under Section 2 of the Voting Rights Act.

Starting at the end of the 1970s and extending through the next decade, the Section 5 preclearance requirement and litigation under Section 2 of the Voting Rights Act curbed efforts to dilute minority voting strength. Following both the 1980 Census and the 1990 Census, the work of the Civil Rights Division to ensure that redistricting did not have a discriminatory purpose or effect resulted in remarkable gains in the ability of minority voters to participate in the political process. Voters were increasingly able to elect candidates of their choice at every level of government.¹⁴

The 1970 and 1975 extensions of parts of the Voting Rights Act expanded the Act's geographical coverage to include preclearance protection for minority voters in places in the North and the West, including Arizona, Texas and parts of New York and California that had not previously been covered. The 1975 amendments also added protections from voting discrimination for Hispanic, Asian Americans, and Native American language minority citizens.

In 1993, Congress added another tool to the Division's voting rights arsenal when by enacting the National Voter Registration Act (NVRA) -- also known as the "Motor-Voter" bill. The NVRA requires states to provide voter registration

¹¹ *Allen v. State Board of Elections*, 393 U.S. 544, (1969)

¹² U.S. Commission on Civil Rights, *The VRA, 10 Years After*.

¹³ *White v. Register*, 412 U.S. 775 (1973).

¹⁴ Just some examples include objections to Georgia's legislative redistricting in 1981, see *Busbee v. Smith*, 549 F. Supp. 494 (1982), objections to Mississippi's congressional redistricting that resulted in the first Black Mississippi congressman in 1986, and Section 2 litigation in Los Angeles County that resulted in the creation of a Hispanic majority district and the first Hispanic County Commissioner in 1992, *Garza v. County of Los Angeles*, 756 F. Supp. 1298 (C.D. Cal. 1990).

materials at departments of motor vehicles and offices that provide public assistance and/or disability benefits.

While some voting enforcement has continued in recent years – most notably to ensure that the minority language provisions of the Act, Sections 203 and 4(f)(4), are vigorously prosecuted – much of the core work of the Voting Section has been significantly diminished. In the last several years, the Section has brought only a handful of Section 2 cases on behalf of African Americans, Hispanics, Asian Americans and Native Americans. In enforcing the NVRA, the Section is pressing states to purge the voter rolls, rather than ensure that states allow registration at social service agencies. Moreover, in pursuing the newest voting legislation, the Help America Vote Act (HAVA), a political appointee in the Division urged the state of Arizona to apply the most cramped interpretation of HAVA. Such a restrictive view would have limited voters' opportunities to use provisional ballots, which defies the position taken by the Election Assistance Commission, the entity with the principle role in implementing HAVA.

Ensuring the voting rights of all Americans in the twenty-first century demands more innovative tactics and approaches than were required during the period of overt segregation and racial discrimination. The Civil Rights Division, in changing its approach, must not stray from its original mission to ensure political equality.

II. EDUCATION

The school bell rings at T.C. Williams High School in Alexandria, Virginia. A group of students from Mr. Harrison's Advanced Placement Government class pours out into the hall, discussing last week's basketball game against West Potomac. The cafeteria boasts a racially, ethnically, and socioeconomically diverse scene. Of the two thousand students enrolled at T.C. Williams, a quarter are Hispanic, a quarter are White, and forty-three percent are Black. Dozens of flags exemplifying the student body's diversity of nationality hang in the school lobby; meanwhile, the city's payment for its students' AP exams and T.C. Williams' initiative to provide every student with a laptop confirm its commitment to leveling the playing field for its students of diverse socioeconomic backgrounds.¹⁵

The diversity of Mr. Harrison's class, while perhaps not typical, was unimaginable fifty years ago in Virginia. Efforts to racially integrate public schools in Virginia have been met with periods of widespread resistance since the Civil War. While many school districts employed tactics to stall integration and to avoid questions as to the racial equality of their facilities, perhaps nowhere was massive resistance more successfully employed than in 1950s Prince Edward County, Virginia. Recounting the story of Prince Edward County sheds light on the progress that has been made regarding issues of educational equality over the past fifty years and, more importantly, the civil rights work in public education that remains our business to resolve.

Prince Edward County is located in a Southside area of Virginia that lay in the region known fifty years ago as the "Black Belt."¹⁶ Stretching from the shores of the Chesapeake Bay down south through the Carolinas and Georgia and west toward East Texas, the counties in that region were predominantly rural and at least one-third Black. Each one embraced stringent laws and social norms enforcing the separation of the races. In 1939, Robert Russa Moton High School was constructed for Blacks in Prince Edward County in an attempt to avoid legal challenge from the NAACP regarding inadequate educational facilities. The new school, however, was overcrowded and underfunded—it lacked a gymnasium, cafeteria, desks, lockers, restrooms, and an auditorium with seats. When the school's repeated requests for additional funds were denied by the all-white school board, students at R.R. Moton took matters into their own hands.

In 1951, some 450 students walked out of the school in protest against the educational conditions in Black Prince Edward schools. Supported by the Richmond NAACP, the students' case, *Davis v. County School Board of Prince*

¹⁵ "T.C. Williams High School Profile," Alexandria City Public Schools (2007); Available at: www.acps.k12.va.us/profiles/tcw.php; www.en.wikipedia.org/wiki/T._C._Williams_High_School

¹⁶ "Prince Edward County: The Story Without An End—A Report Prepared for the U.S. Commission on Civil Rights, July 1963;" Available at www.library.vcu.edu/jbc/speccoll/pec03a.html

Edward County, became one of the five cases combined under the name *Brown v. Board of Education* in the 1952-1953 Supreme Court term. This decision, which overturned *Plessy v. Ferguson* (1896) and declared racial segregation to be unconstitutional, was met with massive resistance in Prince Edward County. Since the Supreme Court specified no time frame for desegregation in *Brown I* (1954), local White leadership delayed its implementation and organized plans to underwrite White teacher salaries to insure that quality White education would continue untouched. Following the 1957 decision in *Brown II* that schools must desegregate “with all deliberate speed,” the Prince Edward County school board epitomized Virginia’s recalcitrant policy of massive resistance in its 1959 decision to close its doors to all public education.

Though the county government refused to appropriate funds for the public school system, various organizations raised money for White families to send their children to private or parochial schools. In 1961, the State of Virginia allocated funds for tuition grants and tax concessions for White children to go to private segregated schools, while Black children were either denied public education or forced to relocate to other counties. It wasn’t until 1964 in the Supreme Court case *Griffin v. County School Board* that Prince Edward County’s and the State of Virginia’s actions were declared unconstitutional. County schools were subsequently ordered to reopen and to integrate.

In 1964, only 1.2 percent of Black students in the entire South attended schools with Whites. In reaction to the dismal state of racial integration throughout the South, Congress passed the Civil Rights Act of 1964. A comprehensive measure mandating nondiscrimination in public education, facilities, accommodations, employment, and federally assisted programs, the Act authorized the Justice Department to intervene in race-based equal protection cases.¹⁷ Though the Civil Rights Division was not a plaintiff in the *Brown v. Board* or the *Griffin* litigation, Title IV of the 1964 Act authorized the Department thenceforth to bring suit against racial segregation. Additionally, Title VI dictates that federal agencies, including the Department of Health, Education, and Welfare, be responsible for ensuring nondiscrimination in federally funded programs—including public schools. The Act also provides for rescinding federal funds for noncompliance.

In 1966 alone, the Civil Rights Division brought fifty-six school desegregation cases under Title IV, Title VI, and Title IX.¹⁸ The Department challenged the legitimacy of dual school systems throughout the South and endeavored to equalize facilities while integrating teaching staff, school activities, and athletics. The decisions resulting from cases brought by the Civil Rights Division required that the school systems not only allow Black children to attend previously all-

¹⁷ Congress also included national origin, sex, and religion in the categories of people to whom equal protection under the Civil Rights Act of 1964 would extend.

¹⁸ Title IX of the Civil Rights Act of 1964 allowed the Justice Department to intervene in private suits.

white schools, but to “undo the harm” created by the segregated system.¹⁹ At the end of 1970, the Division had 214 active school desegregation cases.

Division efforts to secure desegregation included challenges to “freedom of choice” policies that failed to convert dual systems into unified integrated ones, efforts to desegregate Northern and Midwestern public schools,²⁰ and challenges to dual systems in higher education as well.²¹ The Department’s education work over the past fifty years, however, is not limited to securing public school desegregation. The Education Section has committed itself over the years to equal education for students with limited-English proficiency (LEP), to equal access for disabled students through enforcement of the Americans with Disabilities Act, and to equal opportunity for female students to participate in sports programs.

Since the closing of Prince Edward County schools in 1959, the region has made great strides towards integration and racial reconciliation. In 2003, the Virginia General Assembly passed a resolution apologizing for massive resistance, and in June 2003 Prince Edward County granted the students who would have graduated from R.R. Moton High School honorary diplomas. Currently, the largest public high school in the area, Prince Edward County High, is fully integrated with a population that is fifty-six percent Black and forty-three percent White. T.C. Williams High School in Alexandria, while not constructed until after the Civil Rights Act of 1964, has also overcome significant resistance to integration. Though the city’s public schools were desegregated in 1959, the three area high schools were consolidated and subsequently integrated in 1971 to remedy pervasive racial imbalances in the 1960s. While these school districts have made significant local progress, further protections by the Civil Rights Division are necessary nationwide, for schools are more segregated now than they were before *Brown v. Board*.²²

While the Justice Department committed to aggressive desegregation efforts in the late 1960s, those efforts have been consistently scaled back in subsequent decades. The courts have undermined progress in achieving racial equality and diversity by limiting possible remedies for segregation. In *Milliken v. Bradley* (1974), for instance, the Supreme Court outlawed a desegregation plan in Detroit that relied on inter-district busing, arguing that dismantling a dual school system

¹⁹ *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), adopted en banc, 380 F.2d 385 (5th Cir. 1966)(immediate desegregation for all states of the 5th Cir.), 417 F.2d 834 (5th Cir. 1969); see also *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969) (desegregation of faculty and staff required).

²⁰ *Reed v. Rhodes*, 607 F.2d 714 (6th Cir. 1979) (Cleveland, OH); *Liddell v. Bd. of Ed.*, 667 F.2d 643 (8th Cir. 1981)(St. Louis, MO); *United States v. Yonkers*, 837 F.2d 1181 (2nd Cir. 1989)(Yonkers, NY).

²¹ *Ayer and United States v. Fordice*, 505 U.S. 717 (1992).

²² Gary Orfield and Susan E. Eaton, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education*.

did not require any particular racial balance in each school. In outlawing busing and emphasizing the importance of local control over the operation of public schools, the decision exempted suburban districts from assisting in the desegregation of inner-city school systems. Limitations such as this sanction *de facto* segregation as a replacement for the *de jure* system outlawed by *Brown*.

Recent decisions such as that from the *Seattle* and *Louisville* cases, though continuing to endorse diversity as a compelling state interest, may undermine local school districts' voluntary strategies to combat segregation. The work of the Education Section of the Civil Rights Division, which contributed greatly in the early years to fuel the fire of integration, has stalled in recent years. It is the responsibility of the Civil Rights Division to contest efforts to scale back the federal government's promise to ensure equal protection and educational opportunity for all its students.

III. EMPLOYMENT DISCRIMINATION

The terrorist attack on September 11, 2001, was a singular act of horror, not seen on U.S. soil since Pearl Harbor. The quick response of New York City firefighters and law enforcement officers to the tragedy made them heroes. These officers -- White, Black, Latino, Asian, and men and women -- are the best that New York has to offer. They risked their lives for others and did so with honor.

And no one paid attention to their race. No one paid any attention to the diversity of the men and women who did their duty and responded quickly and efficiently to the City of New York. In the 50 years since the Division was created, Americans have become accustomed to this kind of diversity.

Fifty years ago, many of these local heroes would not even have had the opportunity to serve their city and their country as first responders. The doors to professions such as law enforcement and firefighting were all but locked in 1957 to people of color. Fire stations were notoriously segregated in the days preceding the civil rights movement. In San Francisco, for instance, there were no black firefighters at all before 1955, and women were not allowed to apply before 1976.²³

Too often, in the 1950s and 1960s, Blacks were relegated to lower paying and less desirable jobs, and were excluded by many traditionally "white" industries and professions, particularly in the South. In many manufacturing industries, for example, Blacks held the jobs that were more physically strenuous, and often hotter or dirtier, while only Whites could compete for better paying supervisory jobs. Unions at the time also had many restrictions and job hierarchies. Women also were relegated to low paying jobs and earned about half of what men earned in 1960.

Much of the change that we have seen in employment with respect to racial and gender discrimination can be directly attributed to the Civil Rights Division's enforcement of Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, sex, religion and national origin.²⁴

In July of 1965, Title VII of the 1964 Civil Rights Act went into effect, though initially few cases were brought. At that time, the Equal Employment Opportunity Commission (EEOC), which was created by the 1964 Act, had no enforcement authority. It could only investigate, conciliate, or refer cases to the Justice Department to litigate. In the summer of 1967, the Civil Rights Division put a

²³ Matthew Yi, "Minorities Named to Key Posts at SFFD," *Examiner* (26 July 2000), A1; Available at: <http://sfgate.com/cgi-bin/article.cgi?file=/examiner/archive/2000/07/26/NEWS11839.dtl>

²⁴ Also, Executive Order 11,246, issued by President Johnson in September 1965, gave the Labor Department the responsibility of enforcing nondiscrimination for federal contractors and subcontractors.

higher priority on employment litigation and six discrimination suits were filed. In 1968, 26 cases were filed. The principle issue in those early employment cases was whether Title VII prohibited only purposeful discrimination or whether it also prohibited non-job related practices that appeared to be neutral but had a discriminatory impact.

The Justice Department first raised this issue in suits challenging union practices in hiring. In one suit, an all-white asbestos workers union restricted membership to the sons (or nephews raised as sons) of union members. Without union membership, individuals could not get hired in the insulation and asbestos trade. A second suit challenged a seniority system that perpetuated the effects of past discrimination. Both practices were ruled unlawful under Title VII by lower federal courts.²⁵ The Supreme Court took up the issue in *Griggs v. Duke Power*, 401 U.S. 424 (1971), after a divided Fourth Circuit ruled that Duke Power could require new hires for previously all-white jobs to have a high school degree and pass a written “ability” test – even though the criteria were not necessary for the job and had not been used for previously-hired White employees. The Justice Department supported the plaintiffs, who prevailed unanimously in the Supreme Court. The Court held that facially neutral “practices, procedures or tests” that are discriminatory in effect cannot be used to preserve the “status quo” of employment discrimination.²⁶

In 1969, the Division sought back pay for the first time in an employment discrimination lawsuit. The Justice Department also determined at that time that the affirmative action practice of requiring numerical goals and timetables for hiring could be required for federal contractors as part of Ex. Order 11246, which prohibited discrimination based on race, national origin or religion by employers with federal contracts. The Division included goals and timetables in the relief and in settlements it sought in Title VII litigation. Following suits against Bethlehem Steel and United States Steel, the Division brought a nationwide suit against the entire basic steel industry in 1974, covering more than 700,000 employees at that time. A nationwide suit against over 250 trucking companies was brought that same year, resulting in a consent decree with the employers. These suits combined “brought over two million employees under the coverage of consent decrees with goals, timetables, and back pay.”²⁷ Another example was a case against the Alabama Department of Public Safety, where the district court in 1972 found that in the 37 year history of the state patrol, there had never

²⁵ *Vogler v. Asbestos Workers* 53, 294 F. Supp. 368 (E.D. La. 1967); *United States v. Local 189 United Papermakers*, 282 F. Supp. 39 (E.D. La. 1968).

²⁶ *Id.* at 430. “The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. ... [G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as ‘built in headwinds’ for minority groups and are unrelated to measuring job capability. *Id.* at 431.

²⁷ David Rose, *Twenty-Five Years Later: Where Do We Stand on Equal Employment Opportunity Law Enforcement*, 42 *Vanderbilt Law Review* 1122, 1145 (May 1989).

been a black trooper. The court required a one-for-one hiring of Black and White troopers until a goal of 25 percent black troopers was met.²⁸

In 1974, the federal government reorganized Title VII enforcement and the litigation authority against private employers was transferred to the EEOC. The Division's Employment Litigation Section was tasked with aggressively enforcing the provisions of Title VII against state and local government employers. From 1975 to 1982, the Civil Rights Division brought cases covering recruiting, hiring and promotional practices of local and state governments, predominately against police and fire departments, which opened up their ranks to minorities and women.²⁹ Similar cases were brought against states and counties to include minorities and women in jobs in correctional institutions.

In 1978, the Civil Rights Division also worked with the EEOC and other agencies to issue the *Uniform Guidelines on Employee Selection Procedures*. These guidelines provided employers, labor organizations and the courts with uniform federal guidance on the kind of evidence necessary to validate a test or selection device for hiring. These guidelines applied to federal government hiring as well.

The policies and practices of the Employment Section of the Division shifted dramatically in the Reagan Administration. In 1983, the Department filed an *amicus* brief in a private suit against the New Orleans police department arguing that no affirmative action remedies, including racial goals, are lawful under Title VII to correct past discrimination, except for those that assist identified victims of discrimination. The Fifth Circuit rejected that position.³⁰ However, in 1984 the Division began systematically revising its consent decrees with over 50 public employers to eliminate numerical goals.

“The cumulative effect of the Justice Department's positions was that the lawyers for the executive branch, who had been in the forefront of advocating the civil rights of blacks, other minorities, and women since the days of President Truman, became the advocates for a restrictive interpretation of the civil rights laws.”³¹

One area in which the Division continued equal employment enforcement during the 1980s was in residency requirements. In 1983, the Division brought suit

²⁸ *NAACP and United States v. Allen*, 340 F. Supp. 703 (M.D. Ala. 1972). Later, the District Court ordered a similar race-conscious requirement for promotions to higher ranks, and the Supreme Court upheld the relief in 1987, despite the United States' reversal of position and opposition to the remedy. *United States v. Paradise*, 480 U.S. 149 (1987).

²⁹ See *United States v. City of Alexandria*, 614 F.2d 1358 (5th Cir. 1980) (covering 45 municipal police and fire departments in Louisiana), and *Vulcan Pioneers, Inc. v. New Jersey*, 832 F.2d 811 (3rd Cir. 1987) (covering 12 fire departments in New Jersey). Cases were brought during this time against state police agencies in Florida, Maryland, Michigan, New Hampshire, New Jersey, North Carolina, Vermont and Virginia.

³⁰ *Williams v. New Orleans*, 729 F. 2d 1554 (5th Cir. 1984).

³¹ Rose, *supra*, at 1155, 1157.

against the city of Cicero, Illinois for requiring that applicants for employment live in the city. Because the city was over 99 percent White, the city work force was all white. Twelve similar suits followed in other White suburbs of Chicago. The court ruled that the residency requirements violated the disparate impact standard of *Griggs*, and settlements or summary judgments were entered in all 13 suits. Lawsuits against 18 suburbs of Detroit were also successful.

In the 1990s the Civil Rights Division renewed its efforts to enforce Title VII against public employers through “pattern or practice” cases and individual cases referred by the EEOC. The Employment Section also took on a critical role in equal employment by defending the federal government’s programs on affirmative action. In July of 1995, President Clinton made clear that the federal government would “mend, not end” affirmative action, and ensure that federal programs were consistent with the Supreme Court’s ruling in the *Adarand* case.³² The Justice Department undertook a meticulous review of all Federal programs to make certain that the programs in place are fair and flexible, and meet the constitutional standard.

In recent years, prosecution of employment cases by the Division has been drastically reduced. A review of the Division’s enforcement activity in recent years shows that the number of Title VII lawsuits is down considerably from previous years, particularly “disparate impact” cases. These are cases that seek systemic reform of employment selection or promotion practices that adversely affect the employment opportunities of women and minorities. At the same time, there is strong evidence that the problem of systemic employment discrimination persists. These cases are complex and difficult, and often the Justice Department is the only entity that can bring them.

³² *Adarand Constructors v. Peña*, 515 U.S. 200 (1995).

IV. FAIR HOUSING

Even though the housing boom has cooled and the downturn in the subprime market is rippling through the credit markets, home ownership continues to remain at the center of the American Dream. For many prospective homeowners today, the chief concern is whether they can afford their neighborhood of choice or whether they should take out a fixed or variable rate loan.

Fifty years ago, however, many families across the country had a much bigger concern—whether their houses could be bombed upon moving in. This happened to Percy Julian--the famed African-American chemist--when he and his family moved into Oak Park, Illinois, in 1950. The Julian home was fire-bombed on Thanksgiving Day just before they moved in. The attacks galvanized the community, which supported the Julians; but for years afterward, father and son often kept watch over the family property by sitting in a tree with a shotgun.

In 1968, Congress responded to mounting evidence of intractable housing discrimination by enacting the Fair Housing Act. The Act prohibits both public and private discrimination on the basis of race, color, religion, and national origin in the sale and rental of housing. It also allowed money damages to be collected in Justice Department suits for the first time.

The Civil Rights Division quickly applied this new authority, and a number of its first cases resulted in negotiated consent decrees. Developers of residential housing and owners and managers of urban rental apartments agreed to use objective, nonracial sales and rental criteria, as well as to engage in affirmative marketing efforts to seek minority customers. One of the first litigated cases resulted in similar affirmative relief.³³ Other early cases involved racial steering, in which real estate agents only showed minority applicants apartments or houses in areas that were already predominantly occupied by people of color. High profile cases were brought against Chicago realtors, against the owners of the LaFrak housing complex in New York City, and against Fred and Donald Trump, also in New York City

Another case of note involved the City of Black Jack, Missouri, just outside St. Louis. In 1969, a community organization in St. Louis began planning to construct multifamily apartments for low and moderate income residents in a predominantly Black area of the city. It found a location outside the city, in an unincorporated part of St. Louis County called Black Jack, which it designated for multi-family units. When they learned of this plan, Whites in the area (Black residents made up less than 2 percent), successfully petitioned the county to incorporate as the City of Black Jack. They then enacted a zoning ordinance prohibiting the construction of any new multifamily dwellings. The Civil Rights Division challenged the zoning ordinance and the court ruled that the racial effect

³³ *United States v. West Peachtree Tenth Corp.*, 437 U.S. 221 (5th Cir. 1971).

of the zoning ordinance was sufficient to violate the Fair Housing Act, and that the Division did not need to prove racial intent: “Effect and not motivation is the touchstone, in part because clever men may easily conceal their motivation.”³⁴ Allowing the Division to focus on discriminatory effect rather than only intent empowered it to take on significantly more cases in recent years.

In 1980, the Civil Rights Division and the Yonkers branch of the NAACP filed suit against the City of Yonkers and the Yonkers School Board, charging that the city had engaged in systematic housing and school segregation for 30 years. This was the first case in which both school and housing segregation were challenged in the same lawsuit. After a three month trial, the court found that the city had restricted housing projects to southwest Yonkers, a predominantly minority area, for the purpose of enhancing racially segregated housing and intentionally to limit minority children to schools with predominantly minority student bodies.³⁵

In 1988, Congress enacted a Fair Housing Amendments Act that provided stiffer penalties, expanded the Act’s coverage to include disabled persons and families with children, and established an administrative enforcement mechanism through the Department of Housing and Urban Development. The Act also required the design and construction of new multifamily dwellings to meet certain adaptability and accessibility requirements. With these amendments, the Division’s Housing Section tripled; and in 1991, it established a fair housing testing program, wherein individuals pose as prospective buyers or renters to assess whether the housing providers discriminate. The Division generally uses both Black and White non-volunteers from other parts of the Justice Department as individual testers. From 1992 to 2005, the Division filed 79 pattern or practice cases using evidence from the fair housing testing program.

In the 1990s, the Division began its Fair Lending program. Discrimination in lending generally involves one of three types of issues; (1) marketing practices in which the availability of loans depends on the racial or ethnic composition of neighborhoods (also known as redlining); (2) underwriting policies and practices in which lenders use different standards to assess the credit worthiness of applicants, and offer different levels of assistance to applicants based on race; and (3) pricing practices in which minorities and other protected groups are charged more for credit than other similarly situated borrowers.

The Department’s first case related to underwriting practices, which was brought in 1992, stemmed from an *Atlanta Journal* series on the Decatur Federal Savings and Loan. Black and Hispanic applicants were rejected for mortgage loans in

³⁴ *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1975)

³⁵ *United States v. Yonkers Board of Education*, 624 F.Supp. 1276 (S.D.N.Y. 1985), *aff’d*, 837 F.2d 1181 (2nd Cir. 1987). As a remedy, the court ordered the City to provide for 200 units of public housing in White areas of the city, as well as to allocate its federal housing grants for several years in ways that would advance racial integration. It also ordered the school board to create magnet schools and implement a school assignment program furthering desegregation.

significantly higher proportions than White applicants. Bank employees also assisted White applicants with the loan process, but not Black applicants. A consent decree was entered that required fair lending training for loan officers, advertising and marketing to minority neighborhoods, and the creation of new branches in minority neighborhoods. In 1993, the Division settled with Blackpipe State Bank in South Dakota for redlining; the bank had refused to make secured loans to Native Americans living on Reservation lands. Loans to purchase cars, mobile homes, and farm equipment were simply unavailable to Native American borrowers. The bank that purchased Blackpipe agreed to set up a fund to compensate victims, establish a marketing program for residents of Indian territories, to conduct financial seminars on Indian reservations, and to recruit qualified Native American applicants for job openings at the bank.

In 1994, the Division entered into a consent decree with Chevy Chase Bank, after it alleged that the bank was not marketing loans in predominantly African American neighborhoods of Washington D.C. and Prince Georges County. Chevy Chase Bank agreed to pay \$11 million to the neglected areas through a special loan program and through service efforts geared toward those neighborhoods. Other fair lending cases involved allegations of racially discriminatory practices relating to the sale of homeowners insurance (Milwaukee), discriminatory pricing (Brooklyn, Long Beach, CA), and predatory lending (New York City, Washington, D.C.).

The results of these efforts were remarkable, for such a short period of time. Due in part to the Division's work and its general impact on the banking profession, the availability of loans to minorities expanded dramatically. Between 1992 and 1995, the number of home loans to minority borrowers grew by more than 100 percent – twice the overall growth rate for home loans.

In recent years, as with many other sections of the Civil Rights Division, many qualified staff have left and/or been pushed out by this Administration. The loss of qualified staff indicates both a loss of institutional memory and a loss of individuals familiar with the Fair Housing Act and other laws covered by the section.

The general criticisms of politicization, anemic enforcement, and a disregard of mission that affect other civil rights issues also affect housing discrimination enforcement. In addition, the Division has been charged in recent years with poor case work and a refusal to take on cases.

The Fair Housing Act clearly states that the Department must pursue cases charged by the Department of Housing and Urban Development. The Department recently claimed, however, that it is not required to file these cases; rather, it may instead perform additional investigations, thereby duplicating and prolonging the process.

In one Chicago case, the Division refused to file a federal suit after a referral from HUD. The Division stalled on the case for so long that Representative Jesse Jackson Jr.'s requested that the Division investigate the case. The case was eventually settled, but the Division's actions served to undercut the relief provided to the complainant in the case.

Home ownership has profound significance in this country and is still at the heart of the American dream. Clearly, minority home ownership has significantly increased over the past 50 years. But too many Americans are still denied that dream when they are denied home mortgage financing or property insurance on account of their race or national origin. In addition, residential segregation continues to plague our cities and suburbs and to add to the resegregation of our public schools. The Housing Section has not done enough to redress these wrongs. The number of enforcement cases brought by the Division — both "pattern or practice" and HUD election cases--has dropped significantly, which is most evident in cases alleging racial discrimination. The Division's fair housing testing program has been depleted and has not advanced a strong fair lending portfolio. Given the problems evident in the subprime market, the Division must advance predatory lending cases to the forefront of its agenda in the coming years.

V. PUBLIC ACCOMMODATIONS

All of Africa will be free before we can get a lousy cup of coffee.

*James Baldwin*³⁶

Richard and Angela Edmond of Greenville, Mississippi are planning a summer vacation to Daytona Beach with their high-school-aged kids Kevin and Marcus. Heading out on a Friday, they plan to spend a night in Selma, Alabama, to break up the drive and to have dinner with Mrs. Edmond's parents. Having resided in Selma their whole lives, Mr. and Mrs. Hurston are well known within their tight-knit neighborhood, particularly for their ongoing involvement in local civil rights issues. Over dinner, the family discusses the Hurstons' participation in the famous 1965 voting rights march from Selma to Montgomery and the voter registration drives they organized after moving back home from college. It doesn't take much to convince the grandkids to accompany them in the morning to see the A.M.E. Church where Dr. King spoke on voting rights in the 1960s.

On their way to the local Comfort Inn after dinner, the Edmonds are reminded of how differently they navigate public life in Alabama from their parents. Fifty years ago, they would not have been welcomed at most hotel chains in their area, nor would they have been served dinner in a racially integrated environment.

While pockets of injustice in customer service still exist throughout the nation, the law no longer supports them. Fifty years ago, segregation in public accommodations—predominantly in the South—was the norm. Whether it was in restaurants, bars, movie theaters, buses, hotels, or drinking fountains, African Americans were routinely denied service and relegated in the social realm to second-class citizens. Through local efforts in the early 1960s, such as the sit-in movement in Greensboro, North Carolina, students and civil rights organizations alike forced the issue of segregation into the public arena. Over the course of a year and a half, the sit-in movement had attracted over 70,000 participants and generated over 3,000 arrests in the name of equal protection under the law.³⁷ As a result of these and other civil rights efforts, the Civil Rights Act passed by Congress in 1964 included provisions outlawing discrimination in public accommodations.

Title II of the Act requires that restaurants, hotels, theaters, sales or rental services, health care providers, transportation hubs, and other service venues afford to all persons “full and equal enjoyment of the goods, services, [and] facilities” without discrimination or segregation. Consequently, federal law prohibits privately owned facilities from discriminating on the basis of race, color, religion, or national origin, and the Americans with Disabilities Act extends this

³⁶ Quoted in Stephen Kasher, *The Civil Rights Movement: A Photographic History, 1954-1968* (New York: Abbeville Press, 1996), 35.

³⁷ Clayborne Carson, David J. Garrow, Gerald Gill, Vincent Harding, and Darlene Clark Hine, eds. *The Eyes on the Prize Civil Rights Reader* (New York: Penguin Books, 1997).

provision to include disability. In 1964, including a directive to address segregation in public accommodations was particularly controversial because the 1883 civil rights cases held that equal protection under the law did not extend to privately owned and operated establishments and facilities. In order to pass Title II, Congress used its constitutional authority over interstate commerce to authorize its actions. The provision succeeded, therefore, due to Congress' ability to intercede in the buying, selling, and trading of services. The year the Act was passed, the Supreme Court upheld Title II as a constitutional application of the commerce clause in *Heart of Atlanta Motel v. United States*.³⁸ The Supreme Court also upheld the Act in a companion case regarding Ollie's Barbeque—a family owned restaurant in Birmingham, Alabama, that served barbeque and home-made pies.³⁹

In the *Heart of Atlanta* and the *Katzenbach* (Ollie's Barbeque) cases, both the hotel and the restaurant, respectively, had brought declaratory judgment cases against the United States in an attempt to force the courts to declare Title II unconstitutional. The Department prevailed in these cases, after which it continued a vigorous enforcement program throughout the late 1960s. Subsequently, thousands of hotels, restaurants, bars, pools, movie theaters and transportation facilities were forced to integrate. Though these efforts were extensive, few cases went to trial and resulted in reported decisions, as the majority of defendants settle and agree to change their patterns and practices of discrimination. Additionally, the preponderance of public accommodations cases in which the Department intervenes originate as private suits.

While drastic changes in the administration of public services have occurred over the past fifty years, discrimination in public accommodations has weakened but not disappeared. In recent years, the Civil Rights Division has been involved in multiple cases alleging overt racial and ethnic discrimination. In 1994, the Justice Department sued Denny's restaurants for discriminatory service. In *U.S. v. Flagstar Corporation and Denny's*, the Division filed and resolved a Title II action in California alleging that the chain consistently required Black customers to prepay for their meals, ordered them to show identification, discouraged their patronage, and removed them from selected restaurants entirely. On the same day the Department filed a consent decree in the California case, six Black uniformed Secret Service officers assigned to protect President Clinton set out to have breakfast with fifteen other officers and were discriminated against at a Denny's in Maryland. A private class-action suit was filed and won. In the California case, the Civil Rights Division entered into a settlement that provided approximately \$54 million to 300,000 customers and required Denny's to implement a nationwide program to prevent future discrimination.

³⁸ 379 U.S. 241 (1964).

³⁹ See *Katzenbach v. McClung* (1964). The Supreme Court also applied the 1964 Act to Piggy Park drive-in barbeque restaurants in South Carolina. See *Newman v. Piggy Park Enterprises*, 390 U.S. 400 (1968). This secured the law's application in drive-in (rather than only in sit-down) facilities.

In 1999, the Division investigated the Adam's Mark Hotel chain for discrimination against African-American hotel guests in Daytona, Florida, during the city's Black College Reunion. The Division's settlement included compensation to the Reunion attendees as well as a substantial contribution to Florida's historically Black colleges to develop scholarships and cooperative education programs in hotel and hospitality management.⁴⁰ And it was not until the Civil Rights Division filed a complaint against Satyam, L.L.C., which owns and operates the Selma Comfort Inn, that the management and employees officially promised to stop discriminating against African-American guests at their hotel. According to the complaint, employees charged Black guests higher prices than Whites, denied them equal access to hotel services and facilities, and consistently steered them toward the back of the hotel until the Department of Justice intervened in 2001.⁴¹

Cases such as this remind us that while the landscape of public life today is a far cry from life in 1957, substantial work remains to eliminate the pattern and practice of discrimination in public accommodations. The Division must continue to commit itself to aggressive civil rights enforcement in the area of accommodations so that all Americans are protected equally from the systematic denial of public services.

⁴⁰ See *U.S. v. HBE Corporation d/b/a Adam's Mark Hotels* (2000).

⁴¹ See *U.S. v. Satyam, L.L.C. d/b/a Selma Comfort Inn, et al.* (2001).

VI. POLICING THE POLICE and PROSECUTING THE KLAN

The beating of Rodney King by officers of the Los Angeles Police Department on March 3, 1991, captured on videotape and broadcast around the world, shocked America. The tape all but confirmed excessive force by the officers, while exposing to the public the longstanding racial tensions in Los Angeles, with which its residents were all too familiar. The state prosecution of the four officers involved resulted in a complete acquittal. Within hours, riots broke out across Los Angeles that left 55 people dead and over 2000 wounded. In light of what appeared to many to be a wholesale miscarriage of justice, the Civil Rights Division opened a new investigation and initiated a federal prosecution. On August 4, 1992, the same four officers were indicted on two counts of intentionally violating Mr. King's constitutional rights by the use of excessive force.

In the federal trial, there was a racially mixed jury, expert medical testimony regarding King's injuries, and a dismissal of the defense's use-of-force "expert." By prosecuting this case, the Civil Rights Division expressed a commitment to racial justice not shown in the state system. The two-month federal trial of the four Los Angeles police officers ultimately ended with the conviction in April 1993 of two of the four officers, Sgt. Stacey Koon, the supervising officer at the scene, and Officer Laurence Powell, the officer who had delivered the most number of blows to Mr. King. Both defendants were sentenced to 30 months in prison.

Fifty years ago, many people living under Jim Crow could not envision a legal system where equal protection under the law would extend to all Americans. From the Civil War until the 1950s, lynching was accepted as a method of imposing law and order in the South and maintaining a social caste system. An anti-lynching campaign was gradually legitimized and supported by the NAACP through legal challenges, but the law continued to criminalize Black behavior.⁴²

The Jim Crow system of *de jure* segregation in the South not only relegated Blacks to second-class citizens for whom voting, education, and housing rights were restricted; it also denied Blacks adequate government protection from the racial violence employed to maintain this caste system as the status quo. Black codes, racist statutes, and government unwillingness to protect Blacks from impending racial violence allowed members of the Ku Klux Klan (KKK) to carry out a racist regime of public violence with impunity. Since local officials were not interested in prosecuting White-on-Black violence, police officers could also avoid culpability for abusing the civil rights of Black residents.

The brutal murder of Emmett Till in the summer of 1955 exemplifies the extent to which southern extremists were able to preserve Jim Crow under the guise of law and order. During the initial period following the *Brown v. Board* decision in 1954, the South witnessed tactics of massive resistance that resulted in pockets of

⁴² Angela Y. Davis, *Are Prisons Obsolete?*, (New York: Seven Stories Press): 2003, 23.

highly publicized racial violence. In 1955, fourteen-year-old Emmett Till, who traveled from Chicago to visit relatives in Mississippi, was viciously murdered and disposed of in the Tallahatchie River for whistling at a White woman. Although the crime was prosecuted by state authorities, the defendants were acquitted by an all-white jury after deliberating for just over one hour, after which the defendants publicly and shamelessly admitted their guilt.⁴³ These and other murders persisted unabated.

In the early years of the Civil Rights Division, criminal cases were limited and had limited effect. While the Division had the statutory authority to prosecute police brutality, the legal systems in the South were not prepared to cooperate. From January 1958 to July 1960, the Division brought 52 prosecutions, but only obtained convictions in four cases and *nolo contendere* pleas in two others. As former Assistant Attorney General for Civil Rights Burke Marshall recalled, “the problem of police misconduct was totally beyond reach” because of little resources, no local cooperation, and total exclusion of minorities from grand juries and trial juries.⁴⁴ The Division brought few prosecutions for police violence against civil rights volunteers during voter registration drives, sit-ins, or protests.⁴⁵

Widespread publicity for the Freedom Summer bus rides in 1964 began to garner national attention to racial violence in the South. On June 21, 1964, the brutal KKK murder of three civil rights workers – James Chaney, Andrew Goodman, and Michael Schwerner – in Neshoba County, Mississippi, brought the issue of Klan violence to national attention. National outrage over these murders prompted President Johnson to order the FBI to prosecute the perpetrators, and sparked a federal government commitment to respond to Klan violence.⁴⁶

In 1965, the Division obtained its first successful prosecution of a Klansman. It was the case of Viola Gregg Liuzzo, a White civil rights volunteer and mother of five who was murdered by four KKK members after the 1965 march from Selma to Montgomery, Alabama. One of the Klansmen in the car with the shooters was an FBI informant, and the killers were arrested the next day. Because the KKK wielded considerable power, the state’s prosecution of this case resulted first in a mistrial and then an acquittal in the second state trial. The Civil Rights Division interceded to bring the case to federal court in Montgomery, Alabama, achieving its first conviction in a civil rights death case in December 1965.

⁴³ Stephen F. Lawson and Charles Payne, *Debating the Civil Rights Movement, 1945-1968* (Lanham, MD: Rowman & Littlefield Publishers, Inc.): 1998, 12.

⁴⁴ “Prosecuting Police Misconduct: Reflections on the Role of the U.S. Civil Rights Division,” Vera Institute of Justice, 1998, http://www.vera.org/publication_pdf/misconduct.pdf See, Jay Stewart, *NAACP v. The Attorney General: Black Community Struggle Against Police Violence*, 9 Howard Scroll: The Social Justice Law Review 29 (2006).

⁴⁵ See, Jay Stewart, *NAACP v. The Attorney General: Black Community Struggle Against Police Violence*, 9 Howard Scroll: The Social Justice Law Review 29 (2006).

⁴⁶ Stephen F. Lawson and Charles Payne, *Debating the Civil Rights Movement, 1945-1968* (Lanham, MD: Rowman & Littlefield Publishers, Inc.): 1998, 30-31.

In 1966, after an all-white jury acquitted two members of the Madison County, Georgia KKK in the July 1964 murder of Black U.S. Army Reserve officer Lt. Col. Lemeul Penn, the Civil Rights Division stepped in to federally prosecute and convict the defendants.

In 1967, the Civil Rights Division was able to prosecute and convict some of the Neshoba and Lauderdale County deputy sheriffs who were responsible for the murders of Chaney, Goodman and Schwerner. In 1968, Assistant Attorney General Stephen Pollak instructed Division attorneys to intervene more forcefully in police brutality allegations.

In 1968, Congress broadened the scope of protection afforded by civil rights statutes by making it a crime to interfere by force or threat of force with certain rights (such as employment, housing, use of public facilities, etc.) because of someone's race, religion, color or national origin. This is commonly known as the federal hate crimes statute.⁴⁷ The impetus for the passage of the federal hate crime law was the assassination of Martin Luther King, Jr. on April 4, 1968.

Today, the Civil Rights Division's criminal prosecutions of "color of law" cases remain an important tool to redress wrongful criminal conduct of law enforcement officers. After the Simi Valley, California jury acquitted the officers who beat Rodney King in a 1992 state trial, the Division confirmed the importance of policing the police by prosecuting and convicting the officers in federal court under the federal statute. And the Division's work to prosecute hate crimes has expanded over the years to include an increased number of successful prosecutions of Klansmen in the south and White supremacists across the country that have engaged in racially motivated violence.

Nevertheless, while criminal prosecutions address individual police misconduct, they fail to hold police departments accountable for perpetrating rather than protecting against widespread civil rights violations. Efforts to create federal accountability for patterns or practices of violations of civil rights within state and local police departments were met with resistance for decades. In the late 1970s, a court determined that the Division did not have the authority to bring a civil lawsuit against the Philadelphia Police Department alleging systematic abuse despite widespread evidence of routine brutality, illegal actions, and racist behavior.⁴⁸ However, in response to the Rodney King incident and subsequent L.A. riots, in 1994 Congress authorized the Attorney General to bring civil actions against state and local law enforcement agencies for a "pattern or practice" of police misconduct.⁴⁹

⁴⁷ 18 U.S.C. 245.

⁴⁸ *United States v. City of Philadelphia*, 482 F. Supp. 1248 (E.D. 1979).

⁴⁹ Passed as part of the 1994 Crime Act, the provision is 28 USC Section 14141. The types of conduct investigated include excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests.

In January 1997, the Division brought its first enforcement action under its civil pattern or practice authority against the Pittsburgh, Pennsylvania police department. The Division's investigation found a pattern or practice of officers using excessive force, falsely arresting, and improperly stopping, searching and seizing individuals and evidence of racially discriminatory action. As a result, the Division entered into a consent decree with the police department that spelled out a series of reforms to address its systemic problems. Similar cases were brought against police departments in Los Angeles, Washington, D.C., Detroit, Prince Georges County, Maryland, Cincinnati, Ohio, and against the New Jersey State Police. However, the Division has not entered into a single consent decree or settlement for alleged violation of the civil police misconduct statute since January 2004.

The Division's anemic enforcement of police pattern or practice cases in recent years has weakened the Department's overall effort to protect civil rights while helping police department identify problem practices that undermine, rather than support, their law enforcement work. Without the Justice Department opening new investigations, there is little impetus for police departments to police themselves.

RECOMMENDATIONS

Fifty years ago, the attempt to integrate Little Rock High School demonstrated the need for the federal government to finally say “enough.” Enough of allowing the states to defy the U.S. Constitution and the courts. Enough of Congress and the Executive Branch sitting idly by while millions of Americans were denied their basic rights of citizenship. The 1957 Act and the creation of the Civil Rights Division were first steps in responding to a growing need.

For years, we in the civil rights community have looked to the Department of Justice as a leader in the fight for civil rights. As this report outlines, in the 1960s and 1970s, it was the Civil Rights Division that played a significant role in desegregating schools in the old South. In the 1970s and 1980s, it was the Civil Rights Division that required police and fire departments across the country to open their ranks to racial and ethnic minorities and women. It was the Civil Rights Division that forced counties to give up election systems that locked out minority voters. And it was the Civil Rights Division that prosecuted hate crimes when no local authority had the will.

However, in recent years, many civil rights advocates have been concerned about the direction of the Division’s enforcement. Over the last six years, too often, politics appears to have trumped substance and alter the prosecution of our nation’s civil rights laws in many parts of the Division. We have seen career civil rights division employees – section chiefs, deputy chiefs, and line lawyers – forced out of their jobs in order to drive political agendas.⁵⁰ We have seen whole categories of cases not being brought, and the bar made unreachably high for bringing suit in other cases. We have seen some outright overruling of career prosecutors for political reasons,⁵¹ and also many cases being “slow walked,” to death.

And the problem continues.

In order for the Division to once again play a significant role in the struggle to achieve equal opportunity for all Americans, it must rid itself of the missteps of the recent past, but also work to forge a new path. It must respond to contemporary problems of race and inequality with contemporary solutions. It must continue to use the old tools that work, but when they don’t, develop new tools. It must be creative and nimble in the face of an ever-moving target. The following are recommendations for a way forward.

⁵⁰ Savage, Charlie. “Civil Rights Hiring Shifted in Bush Era: Conservative leanings stressed.” *The Boston Globe*, 23 July 2006.

⁵¹ Eggen, Dan. “Criticism of Voting Law Was Overruled: Justice Dept. Backed Georgia Measure Despite Fears of Discrimination.” *The Washington Post*, 17 November 2005: A01; Eggen, Dan. “Justice Staff Saw Texas Districting As Illegal: Voting Rights Finding On Map Pushed by DeLay Was Overruled.” *The Washington Post*, 2 December 2005: A01.

A. Politicization of the Division

Perhaps the most troubling aspect of the change in the Division in recent years is the extent to which their decision-making has been driven by politics. Changes in Administration have often brought changes in priorities within the Division, but these changes have never before challenged so directly the core functions of the Division. And never before has there been such a concerted effort to structurally change the Division by focusing on personnel changes at every level.

The Division's record on every score has undermined effective enforcement of our nation's civil rights laws, but it is the personnel changes to career staff that are, in many ways, most disturbing. For it is the staff that builds trust with communities, develops the cases, and negotiates effective remedies. Career staff has always been the soul of the Division, and it is under attack.

The blueprint for this attack appeared in an article in *National Review* in 2002. The article, "Fort Liberalism: Can Justice's civil rights division be Bushified,"⁵² argued that previous Republican administrations were not successful in stopping the Civil Rights Division from engaging in aggressive civil rights enforcement because of the "entrenched" career staff. The article proposed that "the administration should permanently replace those [section chiefs] it believes it can't trust," and further, that "Republican political appointees should seize control of the hiring process," rather than leave it to career civil servants – a radical change in policy. It seems that those running the Division got the message.

To date, four career section chiefs have been forced out of their jobs, along with two deputy chiefs, including the long serving veteran who was responsible for overseeing enforcement of Section 5 of the Voting Rights Act. And the criteria for hiring career attorneys have become their political backgrounds instead of their experience in civil rights. Longtime career attorneys have left the Division in large numbers. The amount of expertise in civil rights enforcement that has been driven out of the Division will be difficult to recapture.

The Civil Rights Division must restore its reputation as the place for the very best and brightest lawyers who are committed to equal opportunity and equal justice. It is not a question of finding lawyers of a particular ideology. Rather, it is a recommitment to hiring staff who share the Division's commitment to the enforcement of federal civil rights laws. That is not politics; it is civil rights enforcement.

⁵² Miller, John J. "Fort Liberalism: Can Justice's civil rights division be Bushified?" *National Review*. 6 May 2002.

B. Voting Rights

The Voting Section at the Civil Rights Division has as its mission to protect the voting rights of racial, ethnic, and language minorities, making it easier for them to access the political process. The voting rights movement was born of a need to promote access as a cure for decades of the denial of access for racial, ethnic and language minority citizens.

However, in recent years the Civil Rights Division has used its enforcement authority to deny access and promote barriers to block legitimate voters from participating in the political process. For example, the Division's failure to block the implementation of Georgia's draconian voter ID law, later held unconstitutional and characterized as a "modern day poll tax" by a federal judge, opened the door for states across the country to pass similar, onerous, laws. Strong evidence exists that requiring a photo ID as a prerequisite to voting disproportionately disenfranchises people of color, the elderly, individuals with disabilities, rural and Native voters, the homeless and low-income people, who are far less likely to carry a photo ID. Up to 10 percent of the voting-age population does not have state-issued photo identification.⁵³

Nevertheless, in recent years the Civil Rights Division has sent a strong message to states that voter ID laws, no matter how restrictive and no matter what the impact on minority voters, will not be challenged by the federal government.

The Division has also recently rejected numerous requests from voting rights advocacy groups to enforce that part of the National Voter Registration Act (NVRA) which requires social service agencies to provide voter registration opportunities, despite the fact that there is substantial evidence that registration at social service agencies has plummeted.⁵⁴ At the same time, the Division has shifted its enforcement priorities to enforcement of voter purge provisions of the law, which in many cases – as in Florida in 2000 – result in thousands of legitimate voters being taken off the rolls and thus denied their right to vote.

The Division has also pushed states to implement the Help America Vote Act (HAVA) in an exceedingly restrictive way, including advocating for a policy of keeping eligible citizens off the voter rolls for typos and other mistakes by election officials.

And the Department of Justice's voter integrity initiative, established in 2001 by former Attorney General John Ashcroft, has created unnecessary commingling

⁵³ Brennan Center for Justice at NYU School of Law & Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform 8 (2005), www.brennancenter.org/programs/downloads/%20final%20report.pdf

⁵⁴ An Election Assistance Commission report from July 2007 concluded that many states continue to ignore the requirements of the NVRA that public assistance agencies offer voter registration to clients, and noted that enforcement of the law by the Division has been virtually non-existent.

between criminal prosecutors in the U.S. Attorneys' offices and Civil Rights Division attorneys. These efforts can, if done improperly, result in a chilling effect on the participation of minority voters, particularly in jurisdictions where there is a history of disfranchisement efforts targeting racial and ethnic minorities.

Rather than promoting schemes to deny equal opportunity for citizens to vote, the Civil Rights Division should be focused on (1) combating voter ID laws that have a disproportionate negative impact on racial, ethnic, or language minorities, like those passed by both the Georgia and Arizona legislatures; (2) ensuring that states are complying with the NVRA's access requirements, such as those that require social service agencies to afford their clients opportunities to register and vote, and making sure that those registrations are processed appropriately; and (3) reinforcing the firewall that exists between the Criminal Division's work to combat voter fraud and the Civil Rights Division's efforts to promote voter access.

C. Fair Housing

The United States Department of Justice's Housing and Civil Enforcement Section has the powerful authority to bring cases involving a pattern or practice of discrimination that violates the Fair Housing Act in federal court. In recent years that authority has been used infrequently to address significant patterns of discrimination based on race and national origin, and almost never to challenge deeply entrenched residential segregation.

Fresh attention is being paid to racial and ethnic segregation in housing because of the recent Supreme Court decisions that refused to permit race conscious school assignment policies in Louisville and Seattle. Although the Court has, over the years, pointed to ending housing segregation as a key way of avoiding racially and ethnically segregated schools, the Justice Department has been looking the other way. The federal government's chief fair housing litigation agency has repeatedly failed to challenge discriminatory housing practices that actually or potentially segregate neighborhoods and other types of discriminatory practices that affect many people of color. Discrimination in real estate sales and racial steering, discrimination in lending that destroys neighborhoods, discrimination in zoning and land use practices that exclude people of color or limit their housing opportunities all continue virtually unchecked by today's Justice Department.

The Civil Rights Division's authority to bring cases involving a pattern or practice of discrimination is found in the Fair Housing Act. In past years it was used to challenge ongoing practices of discriminatory conduct by real estate agents, lenders, and local government officials, sometimes across entire communities. In recent years the authority has not been used in this way. The federal government was given this pattern or practice authority as a powerful federal tool to check the

often longstanding discrimination that so deeply divides our communities. That power lies almost unused today.

The Civil Rights Division's Housing and Civil Enforcement Section also has suffered from the loss of many career employees over the past six years and internal turmoil similar to that which has made headlines in the Division's Voting Rights Section.

D. Disability Rights

In 1990, Congress enacted the Americans with Disability Act (ADA), and the Disability Rights Section is now one of the largest sections within the Civil Rights Division. Since 1990, the Section has: brought suits to remove architectural and other barriers and ensure access to public accommodations (including all hotels, retail stores, restaurants, and places of recreation) and public transportation for person with disabilities; litigated against state and local governments; certified state and local building codes to ensure compliance with the ADA standards for accessible design; and instituted an extensive mediation program to promote voluntary compliance with the ADA.

The disability rights activities of the Division have historically enjoyed bipartisan support under Attorneys General Richard Thornburgh and Janet Reno. In recent years, the Civil Rights Division launched a successful "ADA Business Connection" series of forums designed to bring together business leaders and disability advocates to build a stronger business case for accessibility and disability as a diversity issue.

Moving forward, there will be a strong need for the Department to show leadership in making the judicial and the executive branches of the federal government true models of how to conduct the business of justice and government in a manner that is accessible and welcoming for all people. The federal government can and should do more to measure its compliance with accessibility requirements and to address deficiencies on a systematic basis. Enforcement of civil rights requirements is especially needed in the areas of access to higher education and access to voting, as widespread noncompliance with accessibility requirements exists in both of these important areas. Also, there is a need for stronger leadership on the issue of access to long-term services and supports in non-segregated settings for people with significant disabilities.

In the years to come, disability advocates look forward to strong leadership from the Department of Justice in helping to stem the tide of Supreme Court federalism decisions that have questioned the history of unconstitutional discrimination against people with disabilities by the States and have whittled away at the scope of the protected class in the Americans with Disabilities Act.

E. Employment Discrimination

The importance of the Department of Justice to the effective enforcement of Title VII cannot be overstated. It is the organization with the prestige, expertise, and financial and personnel resources to challenge discriminatory employment practices of state and local government employers. As a general rule, private attorneys and public interest organizations lack the financial and personnel resources to act as private “Attorneys General” in the Title VII enforcement scheme.

Combating discrimination against African Americans has remained a central priority of the Division through both Republican and Democratic administrations. Unfortunately, in recent years, enforcement of Title VII’s protections for racial and ethnic minorities has fallen off dramatically. In fact, over the past several years the Employment Section has chosen to devote precious resources to a number of controversial “reverse discrimination” cases on behalf of Whites. As long as race discrimination against minorities remains a sad, harsh reality in this country, battling the persistent scourge of workplace discrimination against minorities must remain a central priority of the Employment Section.

Similarly, throughout most of its history, the Employment Section has recognized and fought for appropriate use of race- and gender-conscious relief. In many cases, the Justice Department entered into consent decrees with race-conscious relief provisions aimed at eliminating the last vestiges of this country’s shameful legacy of race discrimination. The Employment Section must support the continued use of constitutional affirmative action programs to remedy past discrimination and promote equal employment opportunity. The Supreme Court has given its stamp of approval for many forms of race-conscious measures, including remedial affirmative action programs. Yet, in recent years, the Employment Section has sought to abandon existing consent decrees that included race-conscious relief and have targeted other employers who attempt to achieve true diversity. Such a change in position threatens to set back the progress that has been made since the passage of the Civil Rights Act.

As the face of discrimination has changed, the method by which discrimination is attacked must change as well. While egregious forms of individual employment discrimination persist, much of today’s discrimination is buried in a gauntlet of screening and hiring processes. These processes include psychological profiling, written cognitive ability tests, personality inventory assessments, polygraph examinations, background screens, criminal background histories, credit score evaluations, and physical ability tests, just to name a few. Even well-intentioned employers and supervisors must grapple with the very real issue of hidden bias. The Employment Section must be dedicated to rooting out discrimination even where unlawful bias takes a more subtle form. Title VII prohibits not only the type of discrimination that is evident through “smoking gun” proof of malicious intent, but also the more hidden type of discrimination that plays out through facially

neutral policies or practices that disfavor a particular group. The Section must continue to use all of the enforcement tools in its arsenal to address these more subtle forms of discrimination. The most powerful of these tools is the authority to bring pattern or practice cases with the support of statistical evidence. As employers engage in questionable practices like conducting credit checks on applicants and abusing information contained in background checks, the Employment Section should be at the forefront of the effort to ensure that employers utilize valid selection procedures.

The Employment Section is uniquely positioned to tackle widespread discrimination that affects large numbers of public employees. The Section must use its statutory authority effectively to combat the persistent problems of discrimination in the workplace. If the Section returns to vigorous enforcement of the law, it can regain its reputation as a true defender of civil rights.

F. Educational Opportunities

The Supreme Court's opinions in the Seattle and Louisville cases, which limit the discretion of local school boards to take the race of students into account in seeking to voluntarily achieve racially and ethnically diverse learning environments for students, make the work of the Civil Rights Division's Educational Opportunities (EO) Section more crucial than ever before. At the same time, those decisions mean the EO Section must re-order its priorities in a few fundamental ways. First, the United States remains a party in many desegregation cases where there continue to be outstanding orders requiring school districts to eliminate the vestiges of prior discrimination. Currently the Section appears to be seeking to have as many of those districts as possible be declared unitary. Now that it is clear that once declared unitary, as was the Louisville school district, a school district may be forced to dismantle student assignment zones and other policies used to foster integration, the Department needs to stop districts from being declared unitary until it is clear that even post-unitary status, the district will remain integrated. The presence of an ongoing desegregation decree gives a school district more tools at its disposal to eliminate the effects of segregation. The Department needs to evaluate how to use the decrees it has obtained to maintain integrated school systems.

Second, the Department now must devote significant resources to determining how to use its enforcement powers under Title VI of the Civil Rights Act to prohibit discrimination by entities receiving federal funds. Most Local Education Authorities (LEAs) receive some form of federal funding. While Title VI complaints go to the Department of Education for investigation in the first instance, the EO Section has a significant role to play in advising the Department of Education Office of Civil Rights on how to interpret and enforce Title VI, and the Department of Justice is the entity that should be litigating those Title VI cases where the Department of Education finds that a recipient of federal financial assistance has been operating in a manner that has a disparate impact

on minority students. There are numerous policies by school boards, such as zero tolerance disciplinary policies; and practices that lead to the over-representation and mistaken categorization of minority students as having learning disabilities, and under-representation in academically gifted programs; that are ripe for investigation under the disparate impact regulations of Title VI. The EO Section can make a major contribution to the government's responsibility to vigorously enforce Title VI of the Civil Rights Act of 1964.

Finally, by working carefully with all stakeholders, LEAs, parents, teachers and local governments, the Educational Opportunities Section has in the past initiated a number of creative programs to foster integrated schools at the K-12 level, including programs that investigate how segregated housing patterns can be dismantled in order to result in integrated educational opportunities. These and other creative initiatives must be undertaken in order to assist school districts that have the will to create diverse learning environments but are daunted by the Supreme Court's limits on their discretion. The Section is, in many ways, the last hope for parents and children who want to see fulfillment of our nation's commitment to equal educational opportunities for all. The Section must re-order its priorities to achieve this mission.

G. Law enforcement accountability

In 1994, Congress passed 42 U.S.C. 14141, the police misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994, which authorizes the Attorney General to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of violating citizens' federal rights, as well as the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, which together prohibit discrimination on the basis of race, color, sex or national origin by police departments receiving federal funds.

Starting in the late 1990s, the Special Litigation began to conduct investigations and implement consent decrees and settlement agreements where the evidence strongly suggested a violation of the police misconduct statutes. The decrees require the police departments to implement widespread reforms, including training, supervising, and disciplining officers and implementing systems to receive, investigate, and respond to civilian complaints of misconduct. The decrees have had a widespread impact and are being used as models by other police departments. The Section also has used its police misconduct authority to reform restraint practices in a Louisiana jail and to obtain systemic relief in juvenile correctional facilities. The Section is investigating other systemic problems in law enforcement agencies, including excessive force; false arrest; discriminatory harassment, stops, searches or arrests; and retaliation against persons alleging misconduct. The decrees have had a widespread impact and are being used as models by other police departments. The Section has also used its authority under the Civil Rights of Institutionalized Persons Act (CRIPA)

to reform restraint practices in adult prisons and jails and to obtain systemic relief in juvenile correctional facilities.

However, in recent years, the section has retreated in its enforcement of these important statutes. The results of this rollback in enforcement have been less accountability by police agencies and a retreat in the efforts to make sure that law enforcement and integrity go hand in hand.

Given the lack of enforcement of these statutes by the Department of Justice, it is more important than ever to amend 42 U.S.C. 14141 to allow for a private right of action to enforce the statute. In addition, the Department needs to support an expansion of its authority, as outlined in the End Racial Profiling Act. The End Racial Profiling Act builds on the guidance issued by the Department of Justice in June 2003, which bans federal law enforcement officials from engaging in racial profiling. ERPA would apply this prohibition to state and local law enforcement, close the loopholes to its application, include a mechanism for enforcement of the new policy, require data collection to monitor the government's progress toward eliminating profiling, and provide best practice incentive grants to state and local law enforcement agencies that will enable agencies to use federal funds to bring their departments into compliance with the requirements of the bill. The Justice Department guidance was a good first step, but ERPA is needed to "end racial profiling in America," as President Bush pledged to do.

CONCLUSION

The fiftieth anniversary of the creation of the Civil Rights Division is a time to take stock of where we have been, where we are, and where we need to go in the struggle for equal rights and equal justice in America. And we have come a long way. A very long way from segregated lunch counters, poll taxes, and “Whites only” job advertisements. But we are not finished. Today, we face predatory lending practices directed at racial minorities and older Americans, voter ID requirements that often have a discriminatory impact on minority voters and that one federal judge in Georgia called a modern-day poll tax, and English-only policies in the workplace. So our work continues.

As this report outlines, one of the critical tools to our collective progress in civil rights has been the Civil Rights Division at the Department of Justice. And the heart and soul of the Division is and has always been its career staff. For 50 years, they have worked to help make our country what it ought to be: a place where talent trumps color and opportunity knocks on all doors. Where you cannot predict the quality of the local school system by the race or ethnicity of the school’s population. Where access is a right, not a privilege. Where difference is not just tolerated, but valued.

We have concerns with the direction of the Civil Rights Division in recent years. The hope is that we can meet those concerns with positive action for our future. This report attempts to begin to map out the way forward. We look forward to the continuing conversation.



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