

The Civil Rights Division
at Forty

A Report by the
Leadership Conference on Civil Rights
on the 40th Anniversary of the
Civil Rights Division
of the Department of Justice

December 9, 1997

...AND JUSTICE FOR ALL

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INTRODUCTION

On December 9, 1997, the Civil Rights Division of the U.S. Department of Justice will celebrate 40 years of defending civil rights. On this occasion, it is fitting to review the significant accomplishments of this uniquely American institution. It is also appropriate to assess areas in which the work of the Division can be strengthened.

From its inception, the Division has been guided by three fundamental principles:

- **Leadership:** The Civil Rights Division has provided the leadership and commitment to ensure that America lives up to the promise enshrined in our Constitution and civil rights laws that no American should suffer unfair treatment due to their religion, national origin, race, color, sex, or disability.
- **Enforcement:** The staff of the Civil Rights Division have worked tirelessly to protect and defend the fundamental rights of our diverse citizenry. For the most part, the work of the Division has been characterized by vigilant and vigorous enforcement of the civil rights laws.
- **Bipartisanship:** Since President Eisenhower, the Division has earned the support and respect of both parties. The Assistant Attorney General for Civil Rights has traditionally been a lawyer of extraordinary skill and commitment to civil rights who shares the same

broad vision as the President and is confirmed by the Senate without respect to partisan politics.

Despite the staggering importance of the Civil Rights Division, many Americans know very little about the Division's work. While many have heard of the more famous cases handled by the Division, few people understand the complexity involved in defending the basic rights of all people in our society.

The first chapter of this report, **The History of the Civil Rights Division** provides a context for the current work of the Division. The second chapter, **The Work of the Civil Rights Division** provides a broad overview of the work of the different sections and offices of the Civil Rights Division. The final chapter, **Recommendations**, outlines the nation's most important "unfinished business" in the civil rights arena and provides suggestions for improving the enforcement of civil rights as the Division commences its fifth decade of operation.

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DISCRIMINATING AGAINST
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I. THE HISTORY OF THE CIVIL RIGHTS DIVISION

These headlines from Justice Department press releases demonstrate why, from its very inception, the Civil Rights Division of the United States Department of Justice has been one of the most important – and busiest – entities devoted to the protection of the rights and liberties of all people in our society.

The Early Years

Established by the Civil Rights Act of 1957 signed into law by President Eisenhower, the Civil Rights Division raised the importance of civil rights issues to a new level. In the early days, the Civil Rights Division was staffed by a small group of attorneys who had previously been enforcing Reconstruction Era civil rights criminal laws in the Criminal Division. Due to the relative lack of federal civil rights laws on the books at that time, the work of the original Civil Rights Division lawyers consisted primarily of enforcing criminal laws against state and local officials and civil rights laws related to voting.¹

But in the early 1960's, the American civil rights movement came of age, and with it came the demand for more extensive civil rights protections and enforcement. The landmark provisions enacted during this period include:

- ❑ **Civil Rights Act of 1957:** creating the Commission on Civil Rights; authorizing the appointment of the Assistant Attorney General for Civil Rights; prohibiting intimidation or coercion of people attempting to vote in federal elections; and increasing

enforcement of criminal civil rights laws.

- ❑ **Civil Rights Act of 1960:** strengthening laws against criminal civil rights violations and voting rights violations.²
- ❑ **Pay Equity Act of 1963:** requiring that women and men with the same qualifications be paid the same wage when performing the same work under the same working conditions.³
- ❑ **Civil Rights Act of 1964:** outlawing discrimination on the basis of race, color, religion and national origin in public accommodations; outlawing discrimination based on race, color and national origin in programs receiving federal funding; providing authority to the federal government to enforce school desegregation; strengthening voting rights laws; creating the Equal Employment Opportunity Commission; and prohibiting discrimination in employment on the basis of race, color, religion, national origin or sex.⁴
- ❑ **The Voting Rights Act of 1965:** creating new rigorous protections against discrimination in voting and providing for a federal oversight role of election-related changes in states with a history of discriminatory voting practices and historically depressed voter participation.⁵

The Civil Rights Division was given the primary responsibility for enforcing all of these important protections.⁶ Not surprisingly, in the years following the enactment of the Civil Rights Act of 1964, the work of the Division expanded exponentially. The Division worked to force the desegregation of literally thousands of public facilities – usually by consent but, when necessary, by filing lawsuits; initiated job discrimination cases; and set about the massive task of eliminating discrimination in federal programs and facilities.

During this same period, the Civil Rights Division continued its traditional work as the chief prosecutor of civil rights crimes.⁷ Often these crimes involved outrageous acts of violence and were remarkable for the extent to which state and local law enforcement and judicial officials conspired in efforts to deny the rights of African-Americans. And yet, the courageous work of the Division during this time provided a glimmer of hope and is something about which all Americans can be proud.

As the Civil Rights Division was peacefully pursuing justice in courtrooms across the country, violence, often sparked by strong-arm police tactics, had begun to overtake the demonstrations in the streets. Beginning in 1964 and building steadily through 1968, American cities literally burned with the anger and frustration of people who had too long been denied basic human rights. And all too often these same citizens were disproportionately the victims of the violence and property destruction wrought by the riots.⁸

1968 is a momentous date in the

history of our nation – and in the struggle for civil rights. In that year, the nation was shocked by the assassinations of first Dr. Martin Luther King, Jr. and then former Attorney General and presidential candidate Robert Kennedy. Also in that year, the National Advisory Commission on Civil Disorders, better known as the Kerner Commission, issued its report observing that

*the nation is rapidly moving toward two increasingly separate Americas ... a white society principally located in suburbs, in smaller central cities and in the peripheral parts of large central cities; and a Negro society largely concentrated within large central cities.*⁹

The report focused national attention on the discrimination and economic deprivation plaguing African-Americans and increased public support for more legislation to address these issues.

Expanding Rights

Responding to the public demands, the Congress finally passed, and President Johnson signed, the Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968. This Act banned discrimination based on race, color, national origin or religion in the sale, rental, and advertisement of the vast majority of privately-owned and public housing. Again, the ultimate responsibility for enforcing the sweeping provisions of this Act rested with Civil Rights Division.¹⁰

Throughout the 1970's the Division's work continued to grow. In addition to engaging in a tremendous amount of litigation based upon the Civil Rights Acts

enacted in the 1960's, several legislative advances enacted in the early 1970's added new enforcement responsibilities to the Division. These included:

- **Title IX of the Education Amendments of 1972:** prohibiting discrimination based on sex in any education program or activity receiving federal financial assistance.¹¹
- **The Rehabilitation Act of 1973:** prohibiting discrimination based on disability in programs and activities receiving federal financial assistance.¹²
- **The Equal Credit Opportunity Act of 1974:** prohibiting discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or receipt of public assistance in credit transactions.¹³
- **In 1975, the Congress amended the Voting Rights Act of 1965** to add a requirement that bilingual voting assistance be provided in areas with very large language minority populations.¹⁴

Also during this period, the Division assisted in shaping remedies to help correct the consequences of discrimination in the workplace. Although constituting a small part of its overall work, during the mid-1970's the Division participated in several cases which sought and achieved affirmative action remedies. These remedies were endorsed by each branch of government, and received the support of both Republican and Democratic administrations.¹⁵

In addition, the Division was actively engaged in the coordination and enforcement of the many anti-discrimination provisions related to programs administered by the federal government. This work was handled by a Section of the Division devoted to the coordination and enforcement of Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, and many similar provisions pertaining to the administration of government grant programs.¹⁶

Beginning with the 1980's, however, the Civil Rights Division significantly decreased its enforcement of civil rights. Many of the policies pursued during this period constituted a dramatic and unfortunate break with longstanding federal civil rights policies of past Republican and Democratic administrations.¹⁷

Nonetheless, despite the efforts to dismantle settled areas of civil rights law and policy, there were some advances made during the 1980's. These advances were due primarily to the initiative of a bipartisan consensus in the Congress, but they required the enforcement by the Civil Rights Division. For example:

- **In 1982, the Congress extended the Voting Rights Act of 1965** and overturned the Supreme Court's decision in *City of Mobile v. Bolden*.¹⁸ The Act clarified that plaintiffs in voting rights cases could win their cases if they were able to show that voting system changes and reapportionments "resulted in" a denial of equal access to the political process. The new "results test" litigation was extensively pursued by

the Division throughout the 1980's.¹⁹

- **In 1988, the Congress enacted the Civil Rights Restoration Act** which overturned the Supreme Court's opinion in *Grove City v. Bell*. *Grove City* had narrowed the application of several laws prohibiting discrimination in programs receiving federal financial assistance. President Reagan originally vetoed the Civil Rights Restoration Act, but the Congress overturned his veto.²⁰
- That same year, the Congress enacted, and President Reagan signed, the **Fair Housing Act 1988** expanding the power of the Civil Rights Division to sue on behalf of victims of housing discrimination. For the first time, the Act prohibited housing discrimination based on disability and housing discrimination against families with children.²¹

Renewing the Commitment

With the advent of the Bush administration, civil rights enforcement gradually began to increase, especially in the areas of voting rights and housing.²² In addition, there were several major advances in civil rights policy, including the passage of the following legislation:

- **The Americans with Disabilities Act of 1990:** prohibiting discrimination against people with disabilities in employment, public accommodations, public programs, communications and transportation.²³
- **The Civil Rights Act of 1991:**

overturning several Supreme Court decisions which had narrowed the application of key civil rights laws making it extremely difficult for victims of discrimination to obtain relief in certain contexts. An earlier version of the bill was vetoed by President Bush before a compromise bill was finally signed in 1991.²⁴

- **In 1992 the Congress amended the Voting Rights Act**, expanding the coverage of certain language minorities to include large Asian Pacific American communities, Alaskan Natives, and American Indians. Assistance provided under the Act included oral interpreters and bilingual election materials among other measures.²⁵

The trend toward a renewed commitment to the enforcement of civil rights received a substantial boost with the election of President Clinton in 1992.²⁶ Moreover, a number of initiatives have demonstrated the President's – and the Civil Rights Division's – reinvigorated commitment to civil rights policy.

- **In 1993, the National Voter Registration Act (also known as the Motor Voter Act) was enacted.** The law is intended to increase voter registration through mechanisms such as agency-based registration and prohibitions against non-voting purges.²⁷
- In 1995, the President conducted a **government-wide review of affirmative action programs** in response to the Supreme Court's

decision in *Adarand v. Peña* and announced the policy of “mending not ending” affirmative action.

- In early 1996, a troubling increase in the number of reported attacks on houses of worship – especially African-American churches in the South – was detected by federal officials. In response, the President formed the **National Church Arson Task Force** (“NCATF”) to coordinate the investigations of the fires, offer assistance in preventing additional attacks, and help rebuild the burned houses of worship.²⁸

Today, the Civil Rights Division stands at a crossroads. Under the leadership of President Clinton, Attorney General Reno, Assistant Attorney General Patrick, and Acting Assistant Attorney General Pinzler, the Division has reclaimed its proud historic role as vigilant protector of the rights of all Americans. Despite this, on this 40th anniversary, it is alarming that the Office of the Assistant Attorney General is currently vacant. President Clinton has appointed an attorney of extraordinary skill and commitment, Bill Lann Lee, to head the Civil Rights Division, and the Senate should confirm his nomination immediately.

The remainder of this report describes the work of the Civil Rights Division and illustrates the dramatic need for the Senate to act quickly to support President Clinton’s nominee for Assistant Attorney General for Civil Rights.

II. THE WORK OF THE CIVIL RIGHTS DIVISION

In 1969, the Civil Rights Division was reorganized from its previous structure based upon geographic region, to an organizational structure based upon the substantive work of the Division. The new organization consisted of subdivisions called "Sections" with responsibility for Criminal civil rights violations, Education, Housing, Employment, Public Accommodations and Voting. There was also a "Coordination" section dedicated to enforcement of Title VI of the Civil Rights Act (prohibiting discrimination in the expenditure of federal funds), legislation, and special appeals. At approximately the same time, the Division also set up an office which would ultimately become a separate section, for "Institutions and Facilities" to enforce the rights of citizens confined to public facilities such as mental health facilities, prisons and juvenile detention centers.²⁹

New issues were also assigned to the Civil Rights Division. Pursuant to a provision in the 1968 Civil Rights Act, an office was created to investigate the rights of Native American citizens confined to reservations. In addition, a task force was created to consider the discrimination and deprivations confronting Hispanic Americans. Finally, a task force was established to review federal laws for codifications of discrimination based on gender.³⁰

Today, the Civil Rights Division is made up of ten subdivisions called "Sections" and a special office with responsibility for immigration related employment issues. These offices are responsible for all of the substantive legal

work involved in defending the nation's civil rights and include: the Criminal Section, the Educational Opportunities Section, the Housing and Civil Enforcement Section, the Employment Litigation Section, the Office of Special Counsel for Immigration Related Unfair Employment Practices, the Voting Section, the Coordination and Review Section, the Disability Rights Section, the Special Litigation Section, the Appellate Section, and the Administrative Management Section. In addition, the Division is home of the Office of Redress Administration.³¹ Each of these offices is described in detail below.

The Criminal Section

Many of the most well-known civil rights cases are handled by the Criminal Section. In fact, from the very inception of the Civil Rights Division, there has been a strong emphasis on the prosecution of criminal civil rights violations.³²

One case in particular illustrates both the perseverance of the Division and the challenges it confronted. On October 20, 1967, an all white jury handed down seven guilty verdicts in *United States v. Price* the case about the brutal slaying of civil rights workers Michael Schwerner, Andrew Goodman and James Chaney. The facts of the case contain an eerie echo of more recent history. The three young men, two white and one African-American, had been inspecting an African-American church burned in June of 1964 when they disappeared. Ultimately, after two district court dismissals and an appeal to the

Supreme Court, the jury convicted Deputy Sheriff Cecil Price and six co-defendants, including several members of the White Knights of the Ku Klux Klan, of conspiring to kill the three civil rights workers.

The Criminal Section, which was formally organized as a separate section in 1969,³³ deals with cases which either cannot be, or are not, addressed by state or local authorities. Throughout the last 40 years, the Criminal Section has often stood as the only source of protection for Americans subjected to the most egregious violations of civil rights. Frequently these cases involve civil rights violations bearing the stain of government involvement such as police misconduct cases.³⁴ Often these cases involve violence, conspiracies to deprive people of their civil rights, and the use or threat of force and intimidation.³⁵

Today, the Section receives thousands of criminal civil rights complaints each year. Great deference is given to state and local law enforcement and therefore many of these investigations result in local prosecutions. Nevertheless, if state or local actions are insufficient, or if a federally protected right is not vindicated, then the Criminal Section will bring a federal prosecution.³⁶

In fiscal year 1996, the Division received 11,721 complaints, reviewed 10,129 and performed full investigations of 2,619. While many of these cases were resolved without the need to resort to criminal prosecution, the Section presented 70 new cases to the Grand Jury and obtained a prosecutorial success rate of 87%. Also in 1996 the Section filed 42 cases involving racial violence charging 66 defendants -- the

highest number of cases ever charged in one year.³⁷

Another important area of criminal civil rights law enforcement involves the prosecution of hate crimes. The Criminal Division has prosecuted and won conviction of more than 500 defendants since 1989. Many of these defendants belonged to hate groups such as racist skinhead gangs, or the Ku Klux Klan.³⁸

This year, a bipartisan coalition of Senators led by Republican Arlen Specter and Democrat Edward M. Kennedy, have proposed expanding the laws intended to aid in the prosecution of hate crimes. The proposed bill would broaden the definition of hate crimes to those attacks based on gender, disability and sexual orientation. In addition, the bill would make it easier for federal authorities to prosecute racial violence by removing unnecessary and unduly burdensome jurisdictional requirements. The enactment of this important bill and the President should sign it in order to give the Civil Rights Division another tool in protecting civil rights.

A fairly new area of litigation for the Section involves protecting the rights of people using reproductive health clinics under the Congressionally enacted Freedom of Access to Clinic Entrances (FACE) Act.³⁹ In recent years, the Section has achieved a 100% conviction rate in 18 criminal actions including the prosecution of Paul Hill in Florida, and 11 civil actions filed under the FACE Act.⁴⁰

The alarming recent increase in attacks on houses of worship has been a major focus of the Criminal Section. The

Section is an integral part of the National Church Arson Task Force (NCATF) which is co-chaired by the Assistant Attorney General for Civil Rights (currently the Acting Assistant Attorney General for Civil Rights.) As of July 2, 1997, the NCATF was investigating approximately 449 fires that occurred in churches and other houses of worship since January 1995. Since 1996, arrests of 214 suspects have been made in connection with over 158 fires. ⁴¹

The Educational Opportunities Section

Equal educational opportunity was mandated by the Supreme Court in the famous *Brown v. Board of Education* case. The responsibility for enforcing this mandate was vested in the Civil Rights Division when it was created in 1957⁴² and in the Educational Opportunities Section in 1969.⁴³

Today, the Section's responsibilities extend far beyond the issue of school desegregation. These responsibilities include:

- working to ensure that school officials do not discriminate against students on the basis of race, religion, national origin, gender or language barriers;
- representing the Department of Education in cases to ensure compliance with certain federal regulations;
- handling cases arising under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act dealing with the

rights of students with disabilities; and

- defending the Department of Education in certain types of law suits against the Secretary of Education.⁴⁴

In sum, the Educational Opportunities Section is charged with the critically important responsibility of ensuring that elementary and secondary schools, as well as well as institutions of higher education, provide opportunity to all students.⁴⁵

The Housing and Civil Enforcement Section

One of the major remaining sources of racial division in the United States is discrimination in housing. Even though it is prohibited by law, housing discrimination continues to divide America into rigidly segregated neighborhoods.⁴⁶ The Housing and Civil Enforcement Section has responsibility for ensuring that all Americans can live and raise their families where they choose.

When the Civil Rights Division was first established forty years ago, housing discrimination was not proscribed by federal law and thus, housing discrimination was not an original focus of the Division. In 1968, however, all of this changed. That year witnessed the passage of the Fair Housing Act of 1968 which prohibits discrimination in the sale, rental, and advertisement of most housing based upon race, color, religion, or national origin.⁴⁷ In 1969, a separate Housing Section was established within the Division.⁴⁸

Today, the Section continues to have the ultimate responsibility for enforcing the Fair Housing Act, which has been expanded to proscribe discrimination based upon disability, sex, and familial status. The law now applies not only to housing providers, but also to municipalities, banks, and insurance companies since discriminatory activities by these types of organizations can also result in residential discrimination.

This broad mandate to defend the rights of Americans in their choices about where to live places tremendous responsibility on the Housing and Civil Enforcement Section. The Section has diverse responsibilities.

- ❑ Bringing housing discrimination cases on behalf of individuals who want to pursue claims after the Department of Housing and Urban Development (HUD) has determined that further legal action is merited.
- ❑ Obtaining temporary restraining orders and preliminary injunctions for HUD when they are needed in the course of discrimination investigations.⁴⁹
- ❑ Conducting “paired testing” in which equally matched pairs of black (or other racial minority) and white persons pose as prospective tenants and try to rent apartments. In this manner, the Section is able to uncover discriminatory practices which might otherwise go undetected.⁵⁰
- ❑ Challenging what are known as “pattern or practice” cases involving

situations in which a person or institution continuously engages in discriminatory activity inhibiting the right of citizens to be able to live where they choose. Over the past five years, the Department has filed 38 pattern and practice cases based on paired testing.⁵¹

The cases handled by the Housing and Civil Enforcement Section go far beyond discrimination in housing. The Section also enforces the Equal Credit Opportunity Act which makes discrimination in credit transactions illegal. In addition it enforces Title II of the Civil Rights Act of 1964 which prohibits discrimination in public accommodations such as hotels, restaurants, theaters and other places of entertainment.⁵²

The Employment Litigation Section

When the Civil Rights Division was first established, there was no federal statute prohibiting employment discrimination based on race or sex. Title VII of the Civil Rights Act of 1964 for the first time prohibited job discrimination based on race, color, religion, national origin and sex. The role of principal enforcer of these rights was given to the Civil Rights Division, and eventually, in a reorganization of the Division in 1969, to the Employment Litigation Section.⁵³

Title VII of the Civil Rights Act of 1964 did not take effect until July 2, 1965 and did not become fully effective until 1968.⁵⁴ Once the Act was fully effective, it became a powerful tool for enforcing the right of all Americans to work to support themselves and their families.

Today, Title VII litigation is still an important tool in ensuring that all Americans have the opportunity to pursue the American dream. Since 1993, the Employment Litigation Section has played a key role in obtaining orders providing relief to more than 2,200 victims of job discrimination as well as more than \$16 million dollars in damages awarded to victims.⁵⁵ These statistics starkly illustrate the continuing prevalence of employment discrimination in America. The importance of the work of the Employment Litigation Section in defending the rights of all Americans to pursue work and earn a living cannot be overestimated.

Because there are currently no federal statutes barring employment discrimination based on sexual orientation, it is impossible for the Civil Rights Division to become involved in the large number of instances in which gays and lesbians are unjustly denied the opportunity to work based on their sexual orientation. Passage of the Employment Non-Discrimination Act (ENDA) would provide the tools to the Civil Rights Division to assist gays and lesbians when they confront unjust discrimination.

The Office of Special Counsel for Immigration Related Unfair Employment Practices

Since the spring of 1994, the Civil Rights Division has been home to the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). This office was established following the enactment of the Immigration Reform and Control Act of 1986 to enforce provisions of the law which prohibit discrimination based on national origin or citizenship status in hiring, recruiting, discharging or referring an

individual for a fee.⁵⁶ The office was created because of concerns that discrimination would increase against people who look or sound "foreign" due to the establishment of new penalties against employers who knowingly hire people who are unauthorized to work in the United States.⁵⁷

Since 1994 the OSC has investigated more than 1,690 discrimination complaints and initiated 125 independent investigations. It has negotiated formal settlements of 158 filed complaints and 26 settlements of independent investigations.⁵⁸

OSC also conducts education and outreach programs aimed at educating employers, potential victims of discrimination, and the general public about their rights and responsibilities.⁵⁹ Finally, the OSC operates a hotline which assists employers with immigration related questions. This service has been extremely useful to employers and received 7564 calls between July 1994 and December 1995.⁶⁰

The Voting Section

From its creation, the Civil Rights Division has placed a strong emphasis on enforcing the right to vote for all Americans. Even before the Voting Section was formally established in 1969, Division attorneys carried a full load of voting rights cases.

The Division was most involved during this early period with cases related to the right to vote. As voter registration drives intensified, so did the resistance of white government officials. At the time it seemed that as soon as one discriminatory voting practice was enjoined, many states

would devise new ways of preventing voting by racial minorities. Finally, in 1965, the Congress enacted the first comprehensive voting rights act. This landmark legislation dramatically increased the tools available to the Division to protect the rights of citizens attempting to exercise their right to vote.⁶¹ The cases filed during that time demonstrate the tremendous challenges confronting the Division as it fought to defend the right to this most fundamental expression of citizenship in a democracy. Perhaps the greatest challenge was posed by the blatant complicity of state and local officials in efforts to deny the right to vote.

Today, in addition to the Voting Rights Act of 1965, the Section enforces the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, Section 203 of the Voting Rights Language Assistance Act of 1992, the National Voter Registration Act 1993, and other statutory provisions designed to safeguard the right to vote of racial and language minorities, disabled and illiterate persons, overseas citizens, persons who change their residence shortly before a Presidential election, and persons 18 to 20 years of age. This responsibility requires the Voting Section to undertake many different activities including: bringing lawsuits against state and local governments to enforce the right to vote, defending lawsuits brought against the Attorney General under the Voting Rights Act, reviewing changes in voting rights laws which may impact citizens' rights, and monitoring election day activities.⁶²

One of the most important provisions enforced by the Voting Section is Section 5 of the Voting Rights Act of 1965. This

provision requires Justice Department approval for changes with respect to voting in nine states and portions of seven other states which previously maintained discriminatory voting practices and had historically depressed voter participation rates. During the 1990's alone, the Voting Section has blocked more than 700 discriminatory voting changes through the Section 5 review process. Significantly, this effort to protect voting rights occurred without having to file a single lawsuit, thus avoiding lengthy and expensive litigation.⁶³

Another important service provided by the Voting Section is the provision of federal observers to monitor actual balloting.⁶⁴ This type of pro-active enforcement activity not only ensures that voters' rights are protected, but also protects the electoral process from contamination by discrimination.

Of course, there are still those instances in which lawsuits must be filed to vindicate the right to vote. Again, the Voting Section is there to ensure that Americans are able to cast their ballot. For instance, the Voting Section's enforcement of Section 203 of the Voting Rights Act requiring assistance to certain language minorities, together with the work of community based organizations, has opened up the opportunity to vote to large numbers of bilingual voters.⁶⁵ The Voting Section has brought many successful lawsuits and obtained settlement agreements on behalf of American voters including efforts to defend the constitutionality of the Motor Voter law, enforce the bilingual provisions of the Voting Rights Act, and defend racially fair re-districting plans.⁶⁶

The Coordination and Review Section

The Coordination and Review Section has existed – under several different names and various forms – since 1969. The primary responsibility of this Section is to ensure that the federal government does not violate the very statutes and regulations with which it is charged with enforcing. This requires the coordination of enforcement by 27 federal agencies of statutes that prohibit discrimination on the basis of race, color, national origin, sex, and religion in programs that receive federal financial assistance. In addition, the Section oversees compliance by the Justice Department with anti-discrimination statutes in the administration of various law enforcement programs.⁶⁷

In order to fulfill this important responsibility, the Coordination and Review Section conducts numerous activities including:

- the development of model regulations, equal opportunity policies and civil rights enforcement procedures; and
- the review of the civil rights enforcement plans of various federal agencies and the provision of technical assistance in drafting and improving these plans.⁶⁸

In 1995, efforts were made to refocus the Coordination and Review Section's activities on improving and energizing the enforcement of government-wide civil rights laws such as Title VI.⁶⁹ This initiative to reinvigorate the enforcement of civil rights laws in programs and activities receiving federal financial assistance is encouraging,

and is a sign that, in the future, more will be done to ensure that federal government policies stand as the best example of strong civil rights enforcement.

The Disability Rights Section

Beginning in the late 1980's, the Civil Rights Division became increasingly involved in work to protect the rights of people with disabilities. In 1990, the Congress enacted and President Bush signed it into law the Americans with Disabilities Act (ADA). The staff of the Civil Rights Division was integrally involved in the process of drafting this landmark legislation.⁷⁰

With the enactment of the ADA, the increased work load for the Civil Rights Division necessitated the creation of the Disability Rights Section to shoulder the enforcement work associated with the rights of people with disabilities.⁷¹ The ADA is a sweeping civil rights law with considerable enforcement requirements. Title I of the Act prohibits discrimination in employment based on disability in all employment practices of state and local government employers with 15 or more workers. Title II of the Act prohibits discrimination based on disability in the activities of state and local governments. Title III of the Act prohibits discrimination based on disability in all public accommodations including hotels, restaurants, retail stores, theaters, health care facilities, convention centers, parks and recreational facilities. The Act also establishes architectural accessibility requirements for many new construction projects.⁷²

In addition to litigation

responsibilities, the Disability Rights Section is charged with:

- ❑ certifying state and local building codes for equivalency with the requirements of the ADA;
- ❑ disseminating technical assistance information and staffing a hotline to provide information about ADA compliance;
- ❑ coordinating the technical assistance activities of other federal agencies that have ADA enforcement responsibilities;
- ❑ providing and monitoring technical assistance grants; and, finally
- ❑ coordinating the administrative enforcement of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 by other federal agencies.⁷³

The work of the Disability Rights Section, through the authority of the ADA, has helped begin the process of allowing people with disabilities to truly benefit from, and participate in, all that our society offers. Since 1993, the Section has succeeded on more than 500 occasions in improving access for people with disabilities.⁷⁴

The Special Litigation Section

People who are confined in certain state and local institutions are at increased risk for civil rights violations by virtue of their isolation. Under the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), the Special Litigation Section

ensures that Americans confined to institutions for people with mental illnesses and people with developmental disabilities, nursing homes, prisons and jails, and juveniles detention halls also receive civil rights protection.⁷⁵ Enforcement of CRIPA has led to thousands of people with mental disabilities being able to leave isolated and segregated facilities to take their rightful place in our communities.⁷⁶

In addition, the Section has responsibility for enforcing the civil provisions of the Freedom of Access to Clinic Entrances Act of 1994 (FACE). This Act prohibits interference with people seeking to obtain reproductive health services. Finally, the Section has the responsibility of enforcing the rights of people with disabilities confined to institutions under the ADA and Section 504 of the Rehabilitation Act of 1973.⁷⁷

The Appellate Section

The Appellate Section of the Civil Rights Division handles appeals of civil rights cases brought by Sections of the Civil Rights Division. This requires the Appellate Section attorneys to litigate cases in the courts of appeal and, in conjunction with the Solicitor General, assist with cases before the Supreme Court. The majority of the Section's cases are appeals from district court cases originally handled by the various trial sections of the Civil Rights Division described above. The Appellate Section's caseload consists of both cases in which the government is affirmatively bringing a lawsuit to enforce civil rights laws, and cases in which the government is a defendant. Finally, the Appellate Section participates in a significant amount of

litigation as *amicus curiae* (friend of the court) in cases which have the potential to affect the enforcement responsibilities of the Civil Rights Division.⁷⁸

The Office of Redress Administration

In response to the outrageous mistreatment of American citizens and resident aliens of Japanese ancestry during World War II, the Congress enacted the Civil Liberties Act of 1988. This act provides for an apology from the United States government and payments of \$20,000 to eligible individuals as partial redress for their forcible evacuation, relocation and internment during the war. The responsibility for administering this important act, and ensuring that all those who deserve payments receive them, was given to the Civil Rights Division. This led to the establishment of the Office of Redress Administration in September 1988.⁷⁹ As of October 1996, the Division authorized redress payments totaling more than \$1.5 billion to approximately 80,000 individuals.⁸⁰

The Administrative Management Section

The operation of such an effective and efficient civil rights enforcement agency requires a significant amount of technical support. The Administrative Management Section provides the management and technical services that enable the rest of the Civil Rights Division to operate. This includes personnel administration, budget formulation, litigation support, computer support, procurement and facility services, mail and file operations, automated systems, and processing of Freedom of Information and Privacy Act requests.⁸¹

III. RECOMMENDATIONS

The Civil Rights Division of the Justice Department has stood as a bulwark against discrimination and the unfair denial of basic rights for forty years – and sadly its work is far from done. On this 40th anniversary of the establishment of the Division, there are several ways in which the work of the Division could be improved in order to better protect and defend the rights of all Americans.

#1: The Congress and the President should recommit themselves and the nation to a bipartisan effort to eradicate discrimination. There remains pervasive on-going discrimination in America. As the daily work of the Civil Rights Division makes all too clear, discrimination based upon race, gender, national origin, religion, disability, sexual orientation and family status persist in all corners of our nation. The Civil Rights Division has a proud history of bi-partisan support and that support must be renewed and reinvigorated in order to continue the battle against discrimination.

#2: The Senate should immediately confirm Bill Lann Lee as Assistant Attorney General for Civil Rights. The Civil Rights Division needs and deserves an experienced leader who has been confirmed by the Senate. At this time, the Civil Rights Division is headed up by Acting Assistant Attorney General for Civil Rights Isabelle Katz Pinzler. While Ms. Pinzler has done an excellent job of running the Division, the

time has come for the Senate to confirm a permanent Assistant Attorney General for Civil Rights.

The President has nominated Bill Lann Lee, who is a superbly qualified and committed civil rights attorney. The nation, and the hard-working and committed attorneys and staff at the Civil Rights Division, need and deserve a Assistant Attorney General of Mr. Lee's caliber. As almost every living former Assistant Attorney General for Civil Rights has stated in writing, Mr. Lee is infinitely qualified for the job and the Civil Rights Division needs and deserves his expert leadership. The Senate should stop playing politics with Americans' civil rights and should immediately vote to confirm Mr. Lee as Assistant Attorney General for Civil Rights.

#3: The Congress should provide increased funding for the operation of the Division. The Civil Rights Division is dangerously underfunded. For the past three years, the Civil Rights Division has received no increase in funding despite a large increase in the work of the Division. Because of inflation, this stagnation in funding actually represents a real decrease in funding for the Division. In 1998, the President should request – and the Congress should provide – an increase sufficient to make up for the flat funding the Division has received for the last three years as well as funding to support a renewed commitment to fighting discrimination.

#4: In the spirit of the longstanding bipartisan commitment to civil rights, the President should appoint and the Congress should confirm judges committed to equal justice under law.

There are currently an unacceptable number of vacancies on the federal bench. The President and the Congress should fill these vacancies immediately, and in so doing, should ensure that the judges who are appointed are committed to equal justice under law and to the vigorous enforcement of longstanding civil rights laws, policies and remedies. The Civil Rights Division will be unnecessarily constrained in its ability to fully protect the rights of all people as long as opponents of civil rights are allowed to play politics with the nation's judiciary.

#5: The Congress should pass and the President should sign the bipartisan Hate Crimes Prevention Act of 1998. In order to protect the rights of all people to exercise their basic civil rights free from the fear of violence and intimidation, the Civil Rights Division requires strong laws prohibiting hate crimes. These laws must extend not only to crimes based on race, color, religion and national origin, but also to gender, disability and sexual orientation.

#6: The Congress should pass and the President should sign the Employment Non-Discrimination Act. It is unconscionable that 40 years after the establishment of the Civil Rights Division there is no federal law barring employment discrimination against gays and lesbians.

The Civil Rights Division must be given the tools necessary to ensure that no person is denied the opportunity to work based on his or her sexual orientation.

#7: The Congress and the Administration should ensure that the Civil Rights Division has the adequate tools and resources to assist all people with disabilities to participate fully in our society. To be its best, America needs the contributions and talents of all of its people. The Congress and the Administration must take every step necessary to ensure the vigorous enforcement of the ADA. Areas in which new initiatives could make a tremendous difference include: the provision of more staff for handling complaints, outreach to under-served communities, and the establishment of training and mediation programs as alternatives to lengthy and costly litigation.

#8: The Administration, the Attorney General and the Civil Rights Division should take bold steps to fulfill the full promise of the National Voter Registration Act. The Act has succeeded in expanding the voter rolls, but more must be done to assist newly registered voters in exercising this most fundamental civil right. One area in which there is ample opportunity for success is in the area of community outreach and education to increase voter participation.

#9: All branches of government should take a strong stand against police

misconduct, especially misconduct involving criminal violations of the civil rights laws. It is a frightening and unacceptable reality that police brutality, coercion and intimidation still threaten many – often the most vulnerable – residents of the United States. The Civil Rights Division, and all other law enforcement agencies, must take a stronger stand against police misconduct and ensure that law enforcement officers in every community protect and defend the rights of all people, not simply the most privileged and powerful.

#10: The Administration and Congress should ensure that the Civil Rights Division has sufficient tools to enforce the laws barring discrimination based on national origin, limited English-proficiency and citizenship status.

America is a nation of immigrants. Our diversity is a source of strength and pride. All branches of government must be vigilant in their enforcement of the laws intended to ensure that no person is discriminated against because of their national origin, language or citizenship status.

#11: The Civil Rights Division should launch a new initiative to ensure the vigorous enforcement of Title VI of the Civil Rights Act of 1964. The enforcement of civil rights in the programs and activities of the federal government must be exemplary. The President, the Attorney General and the Civil Rights Division, should take bold steps to ensure that the stain of discrimination is removed from all federal hiring, contracting, programs and activities.

Acknowledgments: The Leadership Conference on Civil Rights would like to express its gratitude to Sarah C. von der Lippe for her work in writing this report, and to Corrine M. Yu for her expert editorial assistance.

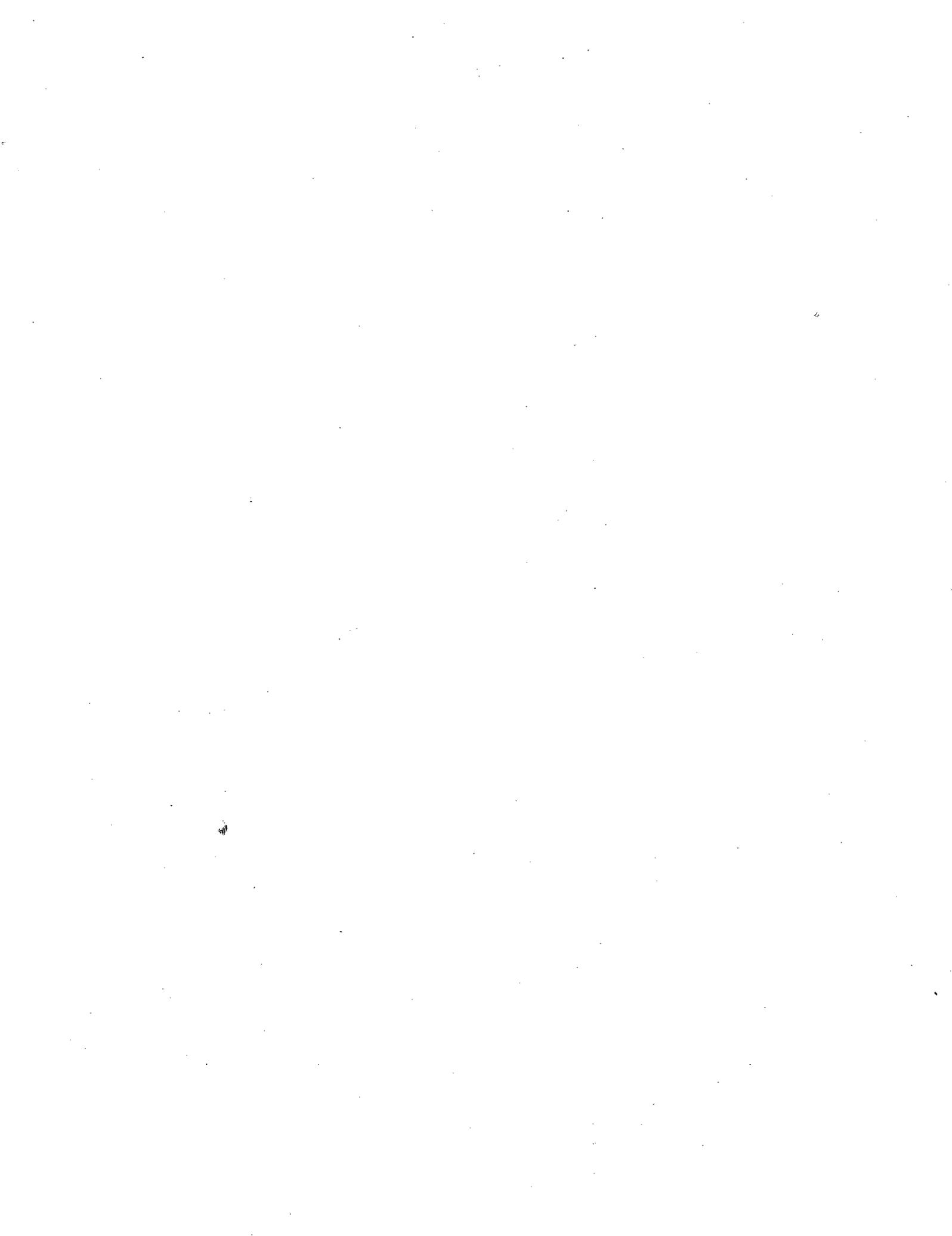
Notes

1. Miriam R. Eisenstein, *The Civil Rights Division At Thirty-Five; A Retrospective*, 1992, at OR-17.
2. Robert Mann, *The Walls of Jericho, Lyndon Johnson, Hubert Humphrey, Richard Russell and the Struggle for Civil Rights*, Harcourt Brace & Company, 1996, bill summaries at 509-512.
3. David E. Anderson, *Newsroom Guide to Civil Rights*, A Project of the Citizens' Commission on Civil Rights, Communications Consortium Media Center, 1994, at 80; *see also*, *Women and the Law*, Mary Jo Frug, ed., The Foundation Press, 1992, at 146.
4. Mann, at 513-515.
5. Anderson, 70-71; *See Also*: Brian K. Landsberg, *Enforcing Civil Rights: Race Discrimination and the Department of Justice*, University Press of Kansas, 1997, at 16.
6. Eisenstein, at OR-18.
7. *Id.*
8. Mary Frances Berry, *Black Resistance, White Law*, Penguin Books, 1971, 1994, 168-180.
9. Anderson, at 47.
10. Eisenstein, at OR-19.
11. Anderson, at 85.
12. *One Nation, Indivisible: The Civil Rights Challenge for the 1990's*, Report of the Citizens' Commission on Civil Rights, 1989, at 437 (hereinafter, "*One Nation, Indivisible.*")
13. *Id.* at 253-254.
14. *The Continuing Struggle: Civil Rights and the Clinton Administration*, Report of the Citizens' Commission on Civil Rights, 1997, at 209.
15. *Id.* at 108.
16. Eisenstein, at OR-21.
17. *One Nation, Indivisible*, at 3. Unfortunately, William Bradford Reynolds, Assistant Attorney General for Civil Rights from 1981 through 1988, proved himself to be hostile to the enforcement of established civil rights policy and remedies.
18. Anderson, at 72.
19. Eisenstein, at OR-23.

20. Anderson, at 85.
21. Eisenstein, at OR-23.
22. *Lost Opportunities: The Civil Rights Record of the Bush Administration Mid-Term*, Report of the Citizen's Commission on Civil Rights, 1991, at 3.
23. Anderson, at 87.
24. *Id.*, at 61-63.
25. *Id.*, at 71-72.
26. *New Challenges: The Civil Rights Record of the Clinton Administration Mid-term*, A Report of the Citizens' Commission for Civil Rights, 1995, 7-17.
27. *Id.* at 170.
28. *National Church Arson Task Force: First Year Report for the President*, United States Department of the Treasury, United States Department of Justice, Bureau of Alcohol, Tobacco and Firearms, and the Federal Bureau of Investigation, June 1997 at 1.
29. Eisenstein, at OR-20.
30. *Id.*
31. *Civil Rights Division Activities and Programs*, U.S. Department of Justice, Civil Rights Division, June 1995, at 3 (hereinafter, "*Brochure*").
32. Eisenstein, at OR-17.
33. *Id.* at OR-20.
34. Phone interview with Stuart Ishimaru, Senior Counsel to the Assistant Attorney General for Civil Rights, December 5, 1997 (hereinafter, "Ishimaru phone interview.")
35. *Brochure*, at 9.
36. *Id.*
37. Ishimaru phone interview.
38. *Brochure*, at 12.
39. Landsberg, at 17.
40. Ishimaru phone interview.
41. *Id.*
42. Eisenstein, at OR-17.
43. Eisenstein, at OR-20.
44. *Brochure*, at 18-20.
45. *Brochure*, at 20.
46. Douglas S. Massey, *The Residential Segregation of Blacks, Hispanic, and Asians: 1970 to 1990*, Population Research Center University of Chicago, June 1993, *in general*, and at 32.

47. Eisenstein, at OR-19.
48. Eisenstein, at OR-20.
49. *Brochure*, at 24
50. *Id.* at 24-25.
51. Ishimaru phone interview.
52. *Brochure*, at 26.
53. Eisenstein, at OR-17-18.
54. *Excerpts from Civil Rights Division Annual Reports, 1958-1967*, provided by the Department of Justice, at 31.
55. Ishimaru phone interview.
56. Testimony of Assistant Attorney General for Civil Rights, Deval Patrick, before the Subcommittee on the Constitution, of the Committee on the Judiciary, U.S. House of Representatives, July 20, 1995, at 8.
57. *Brochure*, at 27.
58. Ishimaru phone interview.
59. *Brochure*, at 27.
60. Ishimaru phone interview.
61. Eisenstein, at OR-18.
62. *Brochure*, at 32.
63. Ishimaru phone interview.
64. *Id.*
65. Information obtained from the National Asian Pacific American Legal Consortium.
66. Ishimaru phone interview.
67. *Brochure*, at 7.
68. *Id.*, at 8.
69. *Id.*, at 7.
70. Eisenstein, at OR-24.
71. *Id.*
72. *Brochure*, at 15.
73. *Id.*
74. Ishimaru phone interview.
75. *Brochure*, at 29.
76. Information received from the ARC.

77. *Brochure*, at 29-30.
78. *Id.*, at 3-4.
79. *Id.*, at 38.
80. Ishimaru phone interview.
81. *Brochure*, at 36.



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