

Remarks
American Constitution Society
12.18.09

Thank you, Caroline, for the generous introduction and for giving me the opportunity to speak to the American Constitution Society, an organization that has done so much to ensure that our national's legal system reflects the values and principles contained in our Constitution. ACS is very fortunate to have you as its leader during this critical period for our nation, when we face great challenges as well as great opportunities.

It's a true pleasure and honor to be here to today to tell you what we are doing to restore and transform the Civil Rights Division. It feels right to me that I should be giving my 60-day progress report to you, the American Constitution Society. When I consider ACS's own description of its mission – namely, to promote the values underlying our Constitution, including individual rights and liberties, and to being a force for improving the lives of all people, I realize how your mission and ours share a lot in common.

In just 60 days, I've had a real opportunity to ponder the state of civil rights in the 21st century. In life, we never stop learning, and I have learned a great deal in these two short months.

I have learned, for instance, that there are some in our nation who believe we no longer need a Civil Rights Division.

There is no denying that, as a nation, we have made great progress in the advancement of civil rights, and the election of an African-American President – as well as the appointment of the first African-American Attorney General – reflect that. Some believe that these milestones mean that we can check civil rights off our nation's collective to-do list.

While last year's historic election marked a triumphant moment in our nation's long, complex and often painful history of civil rights, it was not the culmination of our journey, but rather an important mile marker along the way. I would ask those who believe we have reached the ideal of a post-racial society to consider this: On the night that Americans elected Barack Obama our nation's first African American president, three men on Staten Island reacted to the news by going out into their community to find African-Americans to assault in retaliation. Or consider that while we have a Latina Supreme Court Justice, the first press release we issued during my tenure announced a guilty plea from a Louisiana man who could not stand to have three Hispanics living across the street, and so he drove them from their home with gunshots and then burned it to the ground.

Should we tell those victims and their families that we no longer need a Civil Rights Division? Should we tell the residents of Shenandoah, Pennsylvania, a community torn apart by a vicious, fatal attack on a man because he was Latino and a subsequent cover up by members of the police department, that we no longer need a Civil Rights Division?

Should we tell the African American and Latino residents of L.A., who were denied apartments in a discriminatory scheme that last month led to the largest rental-related fair housing settlement ever, that the work of civil rights is finished, and we should close our doors and go home? Should we tell high school girls in Florida, some of whom nearly lost their chance to participate in high school sports, that their problems have been solved, and the Civil Rights Division is no longer necessary? Should we tell the young people housed in some of New York's juvenile institutions, who are regularly subjected to excessive force that results in severe injuries, broken bones and shattered teeth, that we have no more concerns about their rights, and there is no longer a need for a Civil Rights Division?

As the late Senator Ted Kennedy repeatedly reminded us, Civil Rights remain the unfinished business of America.

I've also learned, in these last 60 days, the heartbreaking truth that the more things change, the more they stay the same.

One of the last cases I worked on before leaving the division in 1999 was the murder of an abortion doctor by an extremist who disagreed with the doctor's services, and one of the first incidents on which I received a briefing upon my return was the murder of Dr. Tiller. A decade after my departure, I returned to see that crosses are still burned on lawns in Indiana, that racial profiling still occurs in many of our communities, that mosques, synagogues and churches are still burned. I had assumed, it turns out naively, that we as a nation had all agreed at the very least that inter-racial marriages are acceptable. But I returned to learn that a Justice of the Peace in Louisiana still believes it is his prerogative to refuse to marry two people because of their skin colors.

I've learned that Hubert Humphrey was right when he said: *"The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in shadows of life, the sick, the needy, and the disabled."*

And in 2009, despite great gains, many still reside in the shadows.

Individuals with disabilities who still struggle to access the basic services the rest of us take for granted, or find themselves isolated from their communities, are living in the shadows. Our Arab and Muslim-American brothers and sisters, who have suffered tremendously from the post 9/11 backlash, live in the shadows. Communities of color, disproportionately affected by the subprime lending epidemic and subsequent foreclosure crisis, are stuck in the shadows. Lesbian, gay, bisexual and transgender Americans, who in the 21st century still have no federal protection from discrimination at work, are living in the shadows.

Many students still lack the quality education all children are guaranteed by law. They're living in the shadows. Many newcomers who came to this nation seeking the same freedom and opportunities that our parents and grandparents sought find themselves the targets of bigotry and hate. They reside in the shadows.

These are the communities for whom the promise of equal justice has not yet been realized. And they are the people who need the Civil Rights Division to continue forging ahead in the quest to fulfill that promise.

Perhaps the most troubling thing I've learned, through my service on the transition and in my preparation for this job, is the precise facts about what was done, and what wasn't, during the past eight years.

I learned, to my great disappointment, that those who had been entrusted with the keys to the Division, and to its great power to pursue justice, treated the Division instead like a buffet line at the cafeteria, cherry-picking which laws to enforce.

Consider these facts: During the 8 years of the previous administration:

- The Division pursued very few pattern or practice cases in the employment context;
- Despite considerable evidence of abusive, discriminatory behavior by lenders and underwriters that contributed to the foreclosure crisis, the Division did not make use of critical tools in its law enforcement arsenal (The Fair Housing Act, Equal Credit Opportunity Act) to hold lenders accountable.
- In the Clinton administration, the Appellate Section filed 643 briefs in Courts of Appeal; in the Bush administration, the figure fell to 424. And appellate attorneys in the Division were conscripted into devoting time and resources to defending the Department in immigration appeals, rather than defending the Division's enforcement activities.
- In the Clinton administration, the Disability Rights Section brought 228 lawsuits, compared with 126 in the Bush administration.
- In the Clinton administration, the Housing Section brought 676 cases, compared with 324 cases in the Bush administration.
- In the Clinton administration, the Voting Section filed 35 Section 2 cases, compared with 15 filings in the Bush administration.
- In Fiscal Year 2006, the Division prosecuted the lowest number (10) of hate crime cases in more than a decade.

And the numbers don't even tell the whole story. For eight years, the career staff was in most instances frozen out of the hiring process for career staff. Section chiefs were sometimes simply notified that a new lawyer or set of lawyers would be starting in their office the following week. Perhaps the most distressing fact of all is that 70 percent of the career attorneys working in the Civil Rights Division in 2003 had left by 2007. Many of them were seasoned veterans of the Division, and they took with them their abundant experience and wealth of knowledge about civil rights law.

But enough about the past. I'm here to talk to you about the Civil Rights Division's future. I've learned that the next chapter in the Division's long story must be one of restoration and transformation. We do not intend to re-create the Civil Rights Division of an earlier era. Instead, we are turning the page to a new chapter in our storied history, working to rebuild our core competencies and reinvigorate our enforcement while also looking toward

the horizon to prepare the Division to face the challenges ahead. We are not simply open for business; we are doing business in new, different and better ways.

With the vision of restoration and transformation in mind, I have spent the last 60 days working with my leadership team and with the career professionals in the Division to re-evaluate what civil rights means in the 21st century.

We have restored a non-partisan, merit-based and transparent hiring process for all attorneys, which had been, and once again is, a critical component of the Division's strength and success. Our hiring policy, crafted by career people for career people, is available on our Web site.

We have renewed our commitment to combating hate-fueled violence and are actively working on the implementation of the landmark Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act. Already we've seen measurable progress on this front, and in the last 60 days or so we've seen activity in as many hate crimes cases as the Division did in all of FY 2006. Just this week we secured three indictments related to a vicious, fatal attack on a Latino man in Shenandoah County, Pennsylvania, and a subsequent police cover up. The incident last year struck fear into the hearts of an entire community, and it is our responsibility in the Civil Rights Division to bring the perpetrators to justice.

Incidents like these belong in our history books, not in today's breaking news headlines.

We recognize that individuals with disabilities have a vast contribution to make to our society that can only be maximized if they have equal access, and we understand that segregating people with disabilities in institutions is every bit as harmful and illegal as segregating children of color in inferior schools. In the last administration, the Disability Rights Section did not litigate any cases or file any briefs enforcing the Olmstead decision; in this administration we have intervened in a significant Olmstead case in New York and filed amicus briefs in three others. Earlier this year, we filed a case against the owner of an RV Resort to who turned away a family because he learned that their two year-old son was HIV positive.

We recognize the fast harm done to communities everywhere, but particularly communities of color, by the lending practices of the last decade. We are playing a lead role in the Financial Fraud Enforcement Task Force, leading a working group on non-discrimination to ensure that lending discrimination is a focus. I am hiring a special counsel for fair lending.

From 2005 until 2007, a total of 16 cases were brought under USERRA, the statute protecting service-members from discrimination when they return to the civilian workforce. In the first eight months of the Obama administration, 18 such cases were filed.

We understand that the seemingly simple act of casting a ballot stands at the very core of our way of life and remains one of our most basic rights, and yet we must continue to

remain vigilant to ensure that right is not denied or burdened, even in the 21st century. The Voting Section is making preparations to handle the influx of Section 5 submissions following the 2010 Census and subsequent redistricting process, and we will be ready.

We also realize that racial and ethnic discrimination persist in this country, both blatantly and in more subtle, but equally damaging forms, and we must reinvigorate our nuts and bolts civil rights enforcement. Last month we obtained the largest monetary settlement ever obtained by the Department in a Fair Housing Act case involving rental units when the owners of numerous Los Angeles apartment buildings located in the Koreatown section of the city agreed to pay \$2.7 million to settle allegations that they discriminated against African-Americans, Hispanics, and families with children.

As I said, our vision is one of restoration and transformation. We are continuing to combat traditional discrimination and civil rights violations, but we also are confronting emerging civil rights challenges as they arise, and working to ensure that we remain nimble enough to combat those challenges on the horizon.

Transformation means recognizing emerging areas where we must play a role.

We have embraced the recognition that civil rights are human rights, and that the United States must set an example for the world. Two days ago I testified before the Senate Judiciary Committee's Human Rights and the Law Subcommittee on how the Civil Rights Division is fulfilling obligations of several international human rights treaties through our domestic civil rights enforcement efforts.

We understand that there are places where our laws fall short in protecting civil rights, and it is our role in the Civil Rights Division to help fill those gaps. I was proud that my first trip to Capitol Hill as head of the Civil Rights Division was to offer the Obama Administration's strong support for the Employment Nondiscrimination Act, which, when passed, will be a critical step toward equality under the law for the LGBT community in this nation.

We recognize how the aftermath of the September 11, 2001 terrorist attacks has subjected the Arab-American and Muslim-American communities to an unjustified backlash, and we are working to be sure we don't fall into the trap of believing that we either protect our national security and safe streets or we protect civil rights. We can and must do both.

While we rebuild our core competencies and return the Division to its position as the nation's premier civil rights litigator, we must also transform ourselves as the nation's civil rights problem solver.

Transformation means taking partnerships to new levels, working more closely and cooperatively with U.S. attorneys' offices, community organizations and state and local governments.

Transformation means approaching problems differently, recognizing that many individuals and communities face a number of challenges that raise civil rights concerns, and those problems do not always neatly divide to match corresponding sections of the U.S.

Code. We are working to move away from the stovepipe approach to civil rights enforcement, which gets manifested when attorneys from three sections are sent into the same community, but they never exchange information regarding the scope of the problems in that community. Our attorneys have information, knowledge and contacts that they can share, and we will encourage them to do so.

Our vision and our agenda for achieving it are undeniably ambitious. But it is what is required of the Civil Rights Division in the 21st century. You may be asking yourselves how we plan to accomplish our goals.

With tremendous support from the President, the Attorney General and Congress, we saw this week enactment of one of the largest budget increases in the Division's history.

Despite considerable atrophy during the previous administration, many dedicated and talented career professionals hung in there and worked effectively even under the constraints that were imposed. Just this week, Congress passed the Justice Department's 2010 budget into law, and it includes funding for 102 additional positions in the Civil Rights Division. I hope you'll indulge me while I take advantage of this recruitment opportunity: we are looking for attorneys who are committed to justice, and we're taking applications. So please spread the word and look for the job announcements on the Department's website, which you can find www.justice.gov/crt.

As we rebuild our ranks, we will be smarter and work more efficiently to ensure that we maximize our new resources. We will hold people accountable. We will build or reinforce partnerships with U.S. Attorneys' offices and our sister agencies, creating partnerships that will allow us to more effectively combat civil rights violations.

We will restore and transform the Division because there is no other option. That is the charge I have received from the President and from Attorney General Holder, who describes himself as an impatient Attorney General.

The Civil Rights Division has the duty to protect the rights that generations of Americans fought so hard to secure. We must build upon the work of those who devoted their lives, and sometimes even gave their lives, to the pursuit of equal justice and equal opportunity, and ensure that their legacy remains strong and vibrant, and that it carries meaning for the next generation.

It is our job in the Civil Rights Division to bring people out of the shadows. It is our job to back up our nation's promise of equal justice for all. When President Kennedy introduced what would become the landmark Civil Rights Act of 1964, he told the American people: *"...this Nation, for all its hopes and all its boasts, will not be fully free until all its citizens are free."* We have made great progress, and we have much to boast about. But we must now turn to face the new challenges ahead, to continue our nation's long journey to fulfill our greatest promise.

Our task is not an easy one. But I am excited about facing – and working to meet – these challenges. I have great faith in the passion and commitment of the dedicated men and

women of Civil Rights Division to carry out our mission. But we can't go it alone and will need your help. I've already met with many civil rights organizations here in Washington and throughout my travels around the country. It's the beginning of a robust dialogue that I look forward to continuing and expanding in the months and years ahead. Today represents another important step along the way and I thank you again for the opportunity to appear before you today.