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Introduction to Civil Rights Symposium

Brian K. Landsberg *

In 1957 Congress enacted the first civil rights act since reconstruction,¹ and a few months later, Attorney General William Rogers transformed the Civil Rights Section of the Criminal Division into the Civil Rights Division of the United States Department of Justice.² For over forty years the Civil Rights Division has played a major role in enforcing the civil rights laws and, through them, the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution. In honor of the fortieth anniversary, the Civil Rights Division Association, composed of present and past members of the Division, held a symposium on October 4, 1997 in the auditorium of the Federal Bureau of Investigation in Washington, D.C. The Symposium, titled "Past and Prologue: The Civil Rights Division at Forty," brought together speakers from various periods in the Division's history to examine the past and future roles of the Department of Justice in enforcing civil rights.³ The first panel examined, "Where Have We Been? A Look at Forty Years of the Division's Accomplishments and Enforcement Strategies," and the second asked, "Where Are We Going? Division Enforcement Issues into the Twenty-First Century." The *McGeorge Law Review* has added to the symposium an essay by the long-time top civil servant in the Civil Rights Division, James P. Turner, and a speech by former Civil Rights Division attorney, United States District Judge Thelton Henderson. Turner explains the role of federal criminal civil rights enforcement and Judge Henderson provides an inspiring call to meet the continued challenges of racial justice in the new millennium.

Former Assistant Attorney General Stephen J. Pollak, introducing the program, noted that it fell near the thirtieth anniversary of the federal conviction of conspirators who had killed three civil rights workers during the "Mississippi summer" of 1964. While much of the Division's work is less dramatic, and most is civil rather than criminal, this prosecution fell at the core of the Division's mission. Stephen Pollak quoted from the closing argument in the case, delivered by his

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1. Civil Rights Act of 1957, 42 U.S.C. § 1995.
2. Attorney General Order No. 155-57, Dec. 9, 1957.
3. The printed version of the symposium which follows is the result of a careful review of a videotape of the proceedings, supplemented by printed notes from some of the speakers. The editors of the *McGeorge Law Review* have added footnotes where appropriate and have edited the remarks. Some of the videotape is inaudible, so some content has been lost.

predecessor, John Doar. You will see that Doar quotes memorable lines from Shakespeare's Richard III. Assistant Attorney General Doar's closing argument was modeled on Robert H. Jackson's closing argument at the Nuremberg trial.⁴ Aside from the passage's eloquence, the common theme that unites the stories of the murders committed by Richard III, the Holocaust, and the murders of the civil rights workers is the vital importance of the rule of law. Even more closely linked are the injustice of the Nazi race laws and the system of state-imposed segregation and white dominance in parts of the United States when the Civil Rights Division was created.

I have often wondered: would the system of state-imposed white supremacy have survived if the Civil Rights Division had not been created? Other forces may ultimately have led to the dismantling of segregation, a process which the NAACP Legal Defense Fund has long toiled to bring about. But the transformation from a society segregated by law to one without official segregation came about through the combined efforts of private lawyers, civil rights organizations, the brave black citizens of the South, and the three branches of the federal government. The Civil Rights Division played a major role in mustering the facts, shaping governing legal principles, and ensuring broad compliance with the law.

As I noted in a prior Symposium issue, the Department of Justice today must take care not to fight the same war it fought then.⁵ The speakers in the present Symposium make clear both the continuing need for civil rights enforcement and the changing nature of the issues. The Division is larger, its enforcement duties are more wide-ranging, and race discrimination is seldom as clear and overt as in the 1950s and 1960s. This is a time to consider legislative action to complete and rationalize the civil rights enforcement structure. It is as important and necessary today as it was forty years ago to expose the courts and the country to the facts of discrimination and to develop imaginative, workable, and fair remedies. And as James P. Turner demonstrates, our system of federalism relies upon federal enforcement not only when the states are violating the Constitution, but when they fail to protect constitutional rights. As long as the artificial lines of race continue to divide America, and as long as a black person need not look at his or her hands to know his or her color,⁶ the legacy of past official segregation will continue to haunt the United States. The Division and the courts have done much to enforce what Judge Henderson calls "legal civil rights," but must now consider what their role is in enforcing what he calls "substantive civil rights."⁷

4. He found the argument in 2 *THE WORLD OF LAW, THE LAW AS LITERATURE* 467, 506 (Ephraim London ed., 1960).

5. Brian K. Landsberg, *Introduction to Symposium: The Department of Justice and the Civil Rights Act of 1964*, 26 *PAC. L.J.* 766, 767 (1995).

6. See Ruth Marcus, *Plain-Spoken Marshall Spars With Reporters*, *WASH. POST*, June 29, 1991, at A1 (reporting Justice Thurgood Marshall's resignation press conference).

7. Thelton E. Henderson, *Black Law Students Annual Black History Month Celebration*, 30 *MCGEORGE L. REV.* 1019 (1999).