U.S. Department of Justice
Civil Rights Division

CIVIL RIGHTS FORUM

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Justice Department conference seeks to increase trust between communities and law enforcement

President Clinton participates in panel discussions as Hugh Price, President and CEO of the National Urban League, makes notes.

The Department of Justice convened a groundbreaking conference in Washington, D.C. on June 9-10, 1999, which brought together leaders from various law enforcement and civil rights organizations in an effort to continue the dialogue on ways to build trust and improve the relationship between police and the communities they serve.

Attorney General Janet Reno opened the conference, entitled "Strengthening Police Community Relationships," by encouraging a frank and open discussion regarding difficult issues such as police use of excessive force and racial profiling (stopping individuals because of their race). She announced that the Justice Department would begin to "survey Americans about their

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experiences with traffic stops." In the last year, these issues have caught the eye of media and the attention of the American public.

President Clinton addressed conference participants and then chaired a roundtable discussion with various civil rights and law enforcement leaders, including Attorney General Reno, Secretary of Transportation Rodney Slater, Deputy Attorney General Eric Holder, and Acting Assistant Attorney General for Civil Rights Bill Lann Lee.

The President denounced racial profiling as "morally indefensible and deeply corrosive." "While public confidence in the police has been growing steadily overall, people of color continue to have less confidence and less trust, and believe they are targeted for action," he said.

In an effort to address the issue on a Federal level, President Clinton announced a directive issued to the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior, for Federal law enforcement agencies in their Departments to begin collecting and reporting data on the race, ethnicity, and gender of the individuals they stop and search. After one year, the agencies are to report on the findings of the new data collection systems and make additional recommendations based on those findings on how to ensure greater fairness in Federal law enforcement procedures.

Kweisi Mfume, President and CEO of the NAACP, talks with Acting AAG Bill Lann Lee.

Attorney General Janet Reno and Acting AAG Bill Lann Lee compare notes.

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President Clinton and Acting AAG Bill Lann Lee greet each other as a panel session concludes. (DOJ photos by Craig Crawford.)

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President Clinton said he hoped this Federal step would encourage State and local officials to examine their own law enforcement agencies for evidence of racial profiling.

The President also announced his support for legislation introduced by Representative John Conyers (D-MI) that would require the Attorney General to conduct a nationwide study on the number and nature of traffic stops conducted by State and local law enforcement agencies. The legislation also would authorize Federal grants to State and local law enforcement agencies to collect and report traffic stop data to the Attorney General for purposes of the study.

Conference participants worked in break-out groups to develop recommendations, proposals, and best practices on various issues, including hiring and recruitment, use of force, racial profiling, police management practices, and community relations. The groups will meet periodically in the future to continue their work, with the goal of developing recommendations in each area.

Many participants found the conference to be particularly significant as it brought together civil rights and law enforcement leaders to discuss these important issues — something that often happens only after an incident has occurred, when emotions and tensions are high. Conference organizers stressed that the conference was only a first step — but an important first step — in working together to resolve concerns raised by conference participants. ✦

Civil rights laws provide powerful tools to address police misconduct

Existing Federal civil rights laws provide powerful tools to address issues of police misconduct that can erode faith in law enforcement.

Three of the major noncriminal statutes in this category are: (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance; (2) the nondiscrimination provision of the Omnibus Crime Control and Safe Streets Act, which prohibits discrimination on the basis of race, color, national origin, sex, and religion by recipients of assistance from the Justice Department's Office of Justice Programs (OJP) and the Office of Community Oriented Policing Services (COPS) (which encompass the vast majority of the nation's police departments); and (3) the 1994 "police misconduct provision" contained in the Violent Crime Control and Law Enforcement Act of 1994, which makes it unlawful for State and local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. This latter provision applies to all law enforcement entities, regardless of whether or not they receive funds from the Federal government and regardless of whether there is a racial or other discriminatory motive.

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Civil rights laws provide powerful tools to address police misconduct

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In addition to these civil statutes, the Department of Justice also enforces criminal statutes that prohibit police misconduct. For example, law enforcement officers who deprive individuals of their rights protected by the Constitution or the laws of the United States while acting under "color of law" are subject to fines and jail terms. The types of police misconduct covered by these statutes include excessive force, sexual assault, intentional false arrests, or the intentional fabrication of evidence resulting in a loss of liberty to another. Enforcement of these provisions, which is the responsibility of the Civil Rights Division's Criminal Section (acting in conjunction with the U.S. Attorneys' offices), does not require that there be any racial, religious, or other discriminatory motive.

While the threat of jail is a powerful incentive for individuals not to engage in police misconduct, the role of the civil statutes set forth above is equally important. These statutes provide a means not only to remedy individual instances of discriminatory treatment, but they also provide a way to encourage law enforcement management to identify and remedy potential misconduct.

In contrast to the 1994 "police misconduct provision," which reaches only unlawful policies or patterns of police misconduct, Title VI and OJP's nondiscrimination provision cover individual instances of mistreatment and reach a wide variety of behaviors including harassment or use of racial slurs, discriminatory traffic stops, coercive sexual conduct, refusal of a law enforcement agency to respond to complaints alleging discriminatory treatment by its officers, and retaliation for filing a complaint. The Civil Rights Division's Coordination and Review Section and OJP's Office for Civil Rights both investigate administrative complaints alleging violations of Title VI and OJP's nondiscrimination provision.

The 1994 "police misconduct provision" is enforced by the Civil Rights Division's Special Litigation Section. Using this provision, the Section has entered into extensive consent decrees with police departments in Steubenville, Ohio, and Pittsburgh, Pennsylvania. These decrees, which resolve cases alleging excessive force, false arrests, and improper searches, include detailed provisions aimed at reforming police department management practices.

The Department of Justice also has established a Police Misconduct Task Force to coordinate the efforts of the various departmental components that address police misconduct issues. These components not only seek to remedy specific instances of police misconduct but, of equal importance, they work with law enforcement agencies to identify and resolve problems before they escalate into misconduct. The lead article in this issue of the Civil Rights Forum describes the Department of Justice-sponsored conference on building trust between the community and law enforcement, which is an example of the Department's proactive approach.

The Department, through its Police Misconduct Task Force, also has published a brochure entitled "Addressing Police Misconduct." This brochure contains information for members of the public on laws related to police misconduct that the Department enforces, both criminal and civil. It tells how people who believe their rights have been violated under any of these laws can file a complaint with the Department. If you would like a copy of the brochure, contact the Title VI Information Line at 1-888-TITLE06 (voice and TDD) or go to the Coordination and Review Section's Website at *http://www.usdoj.gov/crt/cor*.

In 1997, the Civil Rights Division sent to the 9,500 law enforcement organizations receiving Federal financial assistance from the COPS office a Question and Answer document about how Title VI of the Civil Rights Act of 1964 and other civil rights statutes apply to law enforcement. The goal was to "ensure that everyone has the faith in law enforcement that is expected and deserved."

The Justice Department's goal remains as it was then, and the Department is vigorously using the existing civil rights laws as tools to achieve that goal. ✦

Something to share? The *Forum* is looking for agency "happenings" and news of interest to other agencies and the civil rights community. Contact us at: (202) 307-2222 (voice); (202) 307-2678 (TDD), orwrite to:

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Supreme Court settles question of student-on-student sex harassment

On May 24, 1999, the Supreme Court established guidelines for determining the circumstances under which a school district could be held liable for damages resulting from student-on-student sexual harassment. The case on review was the Eleventh Circuit's decision in Davis v. Monroe County Board of Education, 120 F. 3d 1390 (11th Cir. August 21, 1997), upholding the dismissal of a mother's Title IX suit against a school board for failure to prevent a fifth grade fellow student from sexually harassing her daughter. The plaintiff complained of eight separate instances of sexual harassment, all of which were reported to teachers at the school.

In Davis v. Monroe County Board of Education, 1999 WL 320808 (1999), the Supreme Court decided that a school could be held liable for money damages in cases of student-on-student sex harassment, but only if a certain set of conditions exists: the school board must have actual knowledge of the conduct; the conduct must be so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school; the harassment must take place in a context subject to the school district's control, e.g., during school hours on school grounds; and the school must be deliberately indifferent to this knowledge, i.e., it must have failed to take steps to stop the misconduct that were reasonable in light of the circumstances.

With this decision, the Supreme Court extended its reasoning in Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998), in which it held that a school may be liable for damages under Title IX where it is deliberately indifferent to known acts of teacher-student sex harassment. In Davis, this holding was extended to cases of student-on-student sex harassment. The Court used the language of the Title IX statute to set forth the parameters of liability.

In continuing to reject the theory that the school can be held liable for the acts of others under agency principles, the Court reasoned that the focus of Title IX liability would not be the student's misconduct but, rather, the school district's own misconduct in failing to remedy the situation. Title IX prohibits a recipient from "subject[ing]" a student to discrimination under any federally funded education program or activity. In other words, the school's failure to act causes students to undergo harassment or makes them vulnerable to it. The Court went on to point out that because the harassment must occur "under" the "operations of" a recipient, 20 U.S.C. §1681(a), §1687, the misconduct must take place in a context where the school has disciplinary authority over the students.

Because Title IX not only protects students from sex discrimination but also protects them from being excluded from "participation in" or "denied the benefits of" a recipient's "education program or activity," the Court ruled that the plaintiff must allege harassment so severe that it undermines or detracts from the victim's educational experience to such an extent that the student effectively is denied equal access to a school's resources and opportunities.

Money damages are not available for simple acts of teasing and name calling, even where these comments target differences in gender. As the Court said: "By limiting private damage actions to cases having a systemic effect on educational programs or activities, we reconcile the general principle that Title IX prohibits official indifference to known peer sexual harassment with the practical realities of responding to student behavior. . . ."

The Court was careful not to suggest that its holding mandated that the school impose specific remedies to known student-on-student sexual harassment such as, for example, immediate expulsion of the offender. School districts will maintain their flexibility over management and discipline so long as the response is not clearly unreasonable in light of the known circumstances.

This Supreme Court ruling supports the Justice Department position in its amicus brief that schools that are given the responsibility for educating students are also responsible for ensuring that the learning environment created for those students is not rendered unlawfully hostile by sexual harassment in violation of Title IX. School officials should be held accountable for their own tolerance or implicit condonation of a hostile environment.

So ordered . . . Court cases of note

Justice Department files amicus brief in Third Circuit case on whether the NCAA is subject to Title VI

The Department of Justice has filed a brief as amicus curiae in the case of Cureton v. National Collegiate Athletic Association, No. 99-1222 (3d Cir.). In Cureton, plaintiffs filed a suit on behalf of a class of African-American student athletes, claiming that the standardized test component of the NCAA's minimum requirements for freshman students to compete in intercollegiate athletics and to receive athletic scholarships has a discriminatory impact on African-Americans in violation of Title VI. The district court concluded the NCAA requirements did have a disparate impact. The court also concluded that the NCAA was covered by Title VI because it received Federal financial assistance, and NCAA member schools had ceded controlling authority over the operation of their intercollegiate athletic programs to the NCAA. See Cureton v. NCAA, 37 F. Supp. 2d 687, 694 (E.D. Pa. 1998).

On appeal, the Third Circuit is expected to decide whether the NCAA is subject to the nondiscrimination requirements of Title VI, and whether there is a private right of action to enforce Federal agency Title VI regulations prohibiting practices that have an unjustified discriminatory impact. In its brief, the Department of Justice argued that Title VI covers the activities of the NCAA for two reasons. First, the NCAA effectively exercises control over a grant awarded by the Department of Health and Human Services (HHS) to the National Youth Sports Program Fund, a corporation controlled by the NCAA and, therefore, the NCAA is an indirect recipient of Federal financial assistance. Second, the NCAA is subject to Title VI, regardless of whether the NCAA receives Federal monies, because member colleges and universities have ceded controlling authority to the NCAA over their federally assisted intercollegiate athletics programs. In other words, the NCAA administers these intercollegiate athletic programs on behalf of its member colleges and universities that are themselves recipients of Federal financial assistance. HHS's Title VI regulations prohibit grant recipients from discriminating "through contractual or other means" by utilizing criteria or methods of administration that have a racially disproportionate impact.

In addition, the Department argued that there is a private right of action to enforce Title VI regulations prohibiting actions that have a discriminatory purpose or effect. The NCAA opposes this view, arguing that while there is a private action to enforce Title VI, which prohibits intentional discrimination, private plaintiffs cannot enforce the implementing regulations that prohibit discrimination based upon a disparate impact theory.

Eleventh Circuit hears arguments on Alabama's English-only driver's tests

On March 25, 1999, the Eleventh Circuit heard the oral argument in the case of Sandoval v. Hagan, an appeal of a district court decision finding that Alabama's "English-only" policy violates Title VI of the Civil Rights Act of 1964 as it applies to how driver's licenses are issued. Sandoval v. Hagan, 7 F. Supp 2d 1234 (M.D. Ala. 1998). The district court found "that the English-only policy has an unjustified disparate impact on the basis of national origin. . . ."

Prior to 1991, Alabama administered written driver's license examinations in approximately 14 foreign languages. In 1991, due to the ratification of a State constitutional amendment declaring English the official language of Alabama, the defendants adopted an "English only" policy, requiring that all portions of the driver's license examination process be administered in English only, and forbidding the use of interpreters, translation dictionaries, and other interpretive aids, even if privately provided.

A private action was brought challenging Alabama's policy as a violation of Title VI and its implementing regulations, which prohibit policies that have an unjustified discriminatory effect on the basis of national origin. After a bench trial, the district court determined that the English-only policy had a disparate impact on foreign-born individuals. It also found that the rule had a significant adverse effect by excluding otherwise qualified drivers from obtaining licenses. The court then examined each of the defendants' rationales for imposing the rule, found that none of them were substantiated, and also found that plaintiffs had proffered effective alternative practices that would result in less disparate impact while addressing the defendant's concerns. The district court thus entered an injunction in favor of plaintiffs.

While Alabama had argued that understanding English was required for highway safety considerations, the district court concluded: "It cannot be seriously disputed that not

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So ordered . . .

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every individual who possesses a valid driver's license from one of the other forty-nine states, territories, or from a foreign country, speaks, reads and writes English. Nevertheless, Alabama will honor their license. . . ." In addition, a former Assistant Director of the Department of Public Safety and former Chief of the Driver's License Division testified that they were aware "of no evidence showing: (1) that non-English speakers are more likely to get into accidents than people who do not speak English; [or] (2) that non-English speakers have difficulty comprehending traffic signals. . . ."

In response to the defendants' appeal, the Civil Rights Division argued as intervenor that Congress had the power to abrogate States' Eleventh Amendment immunity to suits under Title VI and its implementing regulations, and had explicitly done so. As amicus, the Civil Rights Division argued that (1) individuals have a private right of action against recipients of Federal funds for violations of Title VI disparate impact regulations in addition to violations of the statute itself; and (2) the district court correctly held that English-only policies could violate Title VI and its discriminatory effects regulations, and that consistent administrative and judicial interpretations to that effect put defendants on sufficient notice that its policy denying the benefits of its program to those who can't read English could be found to violate Title VI discriminatory effects regulations. Indeed, an Alabama Attorney General Opinion concerning the English-only requirement raised a concern that it might violate Title VI.

The court has not yet issued an opinion on the appeal. ✥

Justice Department requests en banc Fifth Circuit review of case involving the use of race as a factor in law school admissions

In 1996, a divided panel of the Fifth Circuit Court of Appeals prohibited the University of Texas Law School from taking race into account when admitting law students. Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996). The Supreme Court's decision not to review the case, Texas v. Hopwood, 518 U.S. 1033, resulted in the return of the case to the district court. On remand, the district court, while finding that none of the plaintiffs would have been admitted to the law school under a race-neutral system, nonetheless enjoined the law school from taking race into consideration in admissions. The district court also awarded nominal damages and attorneys fees. Hopwood v. Texas, 999 F. Supp. 872 (W.D. Tex. 1998).

The Department of Justice, as amicus curiae, has asked the Fifth Circuit bench, en banc, to review the lower court's decision. In its brief, the Department reiterated its concern that a Fifth Circuit panel had rejected the continuing applicability of the Supreme Court's decision in Regents of the University of California v. Bakke, 438 U.S. 265 (1978). Specifically, the Department argued that Bakke is still good law and should not have been disregarded. Additionally, the brief pointed to existing Department of Education policy guidance on the use of race-targeted financial aid, which uses diversity as a justification for such targeting. The brief also cited the Department of Education's Title VI regulations, which permit voluntary actions even in the absence of prior discrimination to overcome conditions that limit the participation of certain people. The Fifth Circuit has not decided whether to hear the case en banc. ✥

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Attorney General.

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