



REPORT ON ERIC DREIBAND: NOMINEE FOR ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

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ABOUT THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The principal mission of the Lawyers' Committee for Civil Rights Under Law is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today. Among its major areas of work are Educational Opportunities, Fair Housing & Community Development, Voting Rights, Criminal Justice and Economic Justice. Since its inception, the Lawyers' Committee has been committed to vigorous civil rights enforcement, the pursuit of equal justice under law, and fidelity to the rule of law.

ABOUT THE “WHERE IS JUSTICE” REPORT SERIES

For 60 years, the Civil Rights Division of the U.S. Department of Justice has stood at the forefront of efforts to protect and safeguard the civil rights of African American, Latino and other minority communities. As the Division prepares to mark its 60th anniversary, it is important to closely examine the current downward trajectory of civil rights enforcement under United States Attorney General Jeff Sessions. Oversight from the public and civil rights groups will also be key in exposing actions taken by the Justice Department that jeopardize federal civil rights enforcement. Thus, the Lawyers' Committee for Civil Rights Under Law is launching a new series of reports entitled “Where Is Justice” to review actions taken by the Justice Department, and to shine a spotlight on key civil rights matters that are being abused or ignored by this administration and Attorney General Sessions.

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EXECUTIVE SUMMARY

On June 29, 2017, President Donald Trump nominated Eric Dreiband to serve as the Assistant Attorney General for the Civil Rights Division of the Department of Justice. The Civil Rights Division, created in 1957 to enforce the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin.

The Civil Rights Division plays an important role in shaping our democracy and the Assistant Attorney General plays a pivotal role in shaping the scope and enforcement of civil rights in our country today. The leader of this division should possess exceptional competence to serve in this position and have a profound respect for the importance of protecting the civil rights afforded by the Constitution and the nation's civil rights laws.

The Assistant Attorney General stands at the helm of protecting civil rights laws and the principles underlying them. In evaluating Dreiband, the Lawyers' Committee has found that his very limited experience in issues like voting and criminal justice is of great concern and brings into question his ability to step into this position at such a critical time in our history. We look forward to working with the Senate Judiciary Committee to ensure that this nomination process provides the Civil Rights Division with a leader who will be a vigorous force in promoting the cause of equal justice under law.

BIOGRAPHY

Eric Dreiband is a native of Indianapolis and Fort Wayne, Indiana. He graduated in 1986 from Princeton with a degree in history. He later went to Harvard where he earned a master's degree in theological studies, with a concentration in ethics and public policy. Dreiband then went on to get a law degree from Northwestern University Law School, where he graduated in 1992 with honors. He also served as articles editor for the Northwestern University Law Review. After law school, he clerked for the Honorable William J. Bauer of the United States Court of Appeals for the Seventh Circuit. From 1997 to 2000, he served in the Office of Independent Counsel Kenneth W. Starr, where he led the prosecution of former associate general counsel to the United States, Webster Hubbell.

Dreiband later served as the deputy administrator of the U.S Department of Labor's Wage and Hour Division, where he directed enforcement of laws like the Fair Labor Standards Act and the Family and Medical Leave Act. Soon after he served as General Counsel of the EEOC, where he directed enforcement of federal employment discrimination laws, including Title VII, the Americans with Disabilities Act, the Equal Pay Act, and the Age Discrimination in Employment Act. After leaving the EEOC, he went to work in private practice, first for Akin Gump and then at Jones Day, where he is currently a partner and frequently represents companies in suits brought by the EEOC.

HISTORY AND PURPOSE OF THE DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

In 1870, Congress passed the Act to Establish the Department of Justice.¹ As the country grew, the government's need for legal representation grew as well, indicating a need for additional staff to support the Attorney General.² Initially, the Department of Justice ("DOJ") was a loose assortment of solicitors from different governmental departments, but over time, DOJ became more centralized, until 1933, when President Franklin Roosevelt issued an Executive Order giving the DOJ total control of United States Attorneys and all government litigation.³

As the DOJ developed, it was organized into divisions that could specialize in certain areas of law. The Civil Rights Division ("Division") was created in 1957 pursuant to the Civil Rights Act of 1957, the first civil rights legislation enacted post-Reconstruction and which authorized DOJ to prevent racial inequality and protect voting rights.⁴ The Division consists of 11 sections, dealing with various civil rights issues, including voting, housing, education, and criminal civil rights violations.⁵

The Lawyers' Committee for Civil Rights Under Law was created at the request of President John F. Kennedy in the summer of 1963. President Kennedy's aim was to involve lawyers in the civil rights movement and use their training and influence to move the struggle for civil rights protections from the streets to the courts.⁶ For more than five decades, the Lawyers' Committee and the Civil Rights Division have worked together to address the emergent civil rights issues of the time, making the nomination of a new leader for the Division highly consequential to the Lawyers' Committee.

Throughout the Division's history, its priorities have always reflected contemporary emergent issues. From 1960 to 1963, the Division focused on desegregating schools and other public accommodations and enforcing voting rights protections. It enforced court orders mandating the integration of universities in Alabama, Georgia and Mississippi and investigated racially motivated crimes like the bombing of the Sixteenth Street Baptist Church in Birmingham, which took the lives of four little girls. The Division's authority was greatly expanded with passage of the landmark Civil Rights Act of 1964, which prohibits discrimination in public facilities, places of public accommodation, employment, and schools. Under the leadership of Republican Assistant Attorney General John Doar--a man who personally escorted

¹ 16 Stat. 162, 41 Cong. Ch. 150.

² <https://www.justice.gov/about>

³ Sewall Key, *The Legal Work of the Federal Government*, 25 Va. L. Rev. 165, 181-198 (1938).

⁴ <https://www.justice.gov/crt/about-division>

⁵ *Id.*

⁶ <https://lawyerscommittee.org/history/>

James Meredith as he integrated the University of Mississippi; who marched along side of protesters from Selma to Montgomery as they demanded voting rights; and who led the teams that secured convictions against members of the Ku Klux Klan for the murders of James Chaney, Andrew Goodman and Michael Schwerner, civil rights workers in Neshoba County, Mississippi, and Viola Liuzzo, a mother of five who had participated in the March to Selma from Montgomery --the Civil Rights Division led the charge on federal efforts to protect and enforce civil rights.

The Voting Rights Act of 1965, one of the most effective civil rights statutes ever passed by Congress, allowed the Division to strike blows against voter literacy tests and block discriminatory voting practices across the south. The Civil Rights Act of 1968 further expanded the Division's ability to combat hate crimes, employment discrimination, housing discrimination, and violations of civil rights under color of law.

Throughout the 1970s, the Division focused on maintaining progress that had been made in the previous decade and continuing desegregation of the nation's public schools and enforcing laws prohibiting discrimination in public accommodations. By the 1980s, as new and often complex civil rights issues emerged, the Division's work expanded. Its focus extended beyond racial discrimination to addressing conditions of confinement in prisons and jails and protecting workers from employment discrimination based on citizenship, immigration status, or national origin.

Through the end of the 20th century, the Division ramped up its enforcement of protections for people with disabilities, in response to the improved access and expanded opportunity provided by the Americans with Disabilities Act of 1990. The Division has also worked to address church arsons and racial profiling, prevent discriminatory lending, and protect the rights of America's service men and women. The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141 ("Section 14141"), gave the Division a significant new tool to protect civil rights and prevent the erosion of public confidence in law enforcement agencies by bringing civil litigation to eliminate any "pattern or practice of conduct by law enforcement officers" that violates the Constitution or laws of the United States. In the 2000s, the Division also joined the international battle to fight human trafficking and prevent sexual and labor exploitation.

The Civil Rights Division has been a tireless defender of American freedoms since its establishment in the Eisenhower Administration, yet it has known its share of low moments. It is uniquely subject to the winds of political change in a way other DOJ divisions are not. To minimize the detrimental effects of an overly politicized DOJ, the Division employs a significant number of career staff that conduct their work outside of the political realm and advise the political appointees that lead the Division. This protective measure is critical to preventing future damage like that suffered in the 2000s, under the Bush administration. During that time, the Division became so politicized that a political appointee exerted unchecked authority and

violated a federal law prohibiting discrimination in federal employment based on political and ideological affiliations, and committed misconduct. During this time, the Division's career attorneys struggled to keep the Division from becoming overly political, particularly in the Voting Section. For example, memos by career staff regarding their analysis of preclearance submissions under section 5 of the Voting Rights Act were ignored by the Division's political appointees. Further, employees were reprimanded when their investigations established that proposed laws would have discriminatory effects. The result was a demoralized Division that lost its ability to be seen as fair and impartial in the execution of its duties and that lost the trust of the American people.

In the 2010s, under the Obama Administration, the Division returned to its guiding principles of fairness, equality, and doing right because it is right. It embraced its traditional focus on voter protection, which was at the very heart of the legislation that led to the Division's existence. From challenging voter ID laws, like the one in North Carolina that was found to "target African-Americans with almost surgical precision" to reaching agreements with municipalities to provide non-English ballots to voters with limited English proficiency, the Division is once again exercising its authority to protect the right to vote.

Increased awareness of racial bias in policing has also led to significant expansion of the Division's work in that area. In recent years, the Division has entered into agreements with various police departments with patterns of civil rights violations, seeking to increase oversight of these departments and ensure that their policies are changed to protect the public. The Division also filed a statement of interest in *Sharp v. Baltimore City Police Department, et al.*, arguing that individuals have a First Amendment right to record police officers in the execution of their duties.

The Division has also placed more focus on protecting the rights of LGBTQ individuals, including actions like filing an amicus brief in *Obergefell v. Hodges*. This case was key to the Supreme Court's landmark decision finding that prohibitions against gay marriage are unconstitutional and challenging discriminatory laws like North Carolina's HB2.⁷

We are living in a pivotal moment for civil rights, and it is key that our Next Assistant Attorney General for the Civil Rights Division is equipped to manage the Division effectively.

⁷Justice Department Files Complaint Against State of North Carolina to Stop Discrimination Against Transgender Individuals (May 9, 2016): <https://www.justice.gov/opa/pr/justice-department-files-complaint-against-state-north-carolina-stop-discrimination-against>

CIVIL RIGHTS ISSUES FACING OUR NEXT ASSISTANT ATTORNEY GENERAL

The American people have demonstrated a strong commitment to the cause of racial justice through the enactment of a series of civil rights laws – it is essential that the next Assistant Attorney General be prepared to interpret and enforce these laws from the moment they take office.

Voting Rights

The Voting Section enforces the civil provisions of the federal laws that protect the right to vote, including the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, the Help America Vote Act and the Civil Rights Act of 1964.

The next Assistant Attorney General will face issues arising from the *Shelby County, Alabama v. Holder* case, in which the Supreme Court held that the coverage formula bringing certain states and jurisdictions under the “special provisions” of the Voting Rights Act is no longer constitutional. Those provisions, in part, required covered jurisdictions to show that proposed changes in voting laws or procedures did not have the purpose and would not have the effect of discriminating based on race. A permanent provision of the Act bars voting practices and procedures (including redistricting plans, at-large election systems, restrictive voter ID laws, and voter registration procedures) that discriminate on the basis of race, color or membership in a language minority group. Section 2 prohibits not only election-related practices and procedures and monitors elections that are intended to be racially discriminatory, but also those that are shown to have a racially discriminatory result.

As the leader of the Civil Rights Division, the Assistant Attorney General must be attuned to possible civil rights violations in the wake of the *Shelby County* decision. One key area of potential voting rights violations is restrictive state laws. In the four years since *Shelby County*, various states have passed laws restricting access to the polls, particularly for minority voters.⁸

Another area of concern is the White House’s unfounded campaign against rampant and unaddressed voter fraud, which is barreling forward despite there being no evidence that such fraud exists. Since the November 2016 election, the President has been adamant that he only lost the popular vote because 3 to 5 million votes were

⁸ <https://www.brennancenter.org/analysis/election-2016-restrictive-voting-laws-numbers>

cast illegally. However, state election officials have denied this occurred, and research into accusations of voter fraud has found that only 31 cases of in-person voter fraud have occurred over the past 15 years, and these were uncovered under existing protections in law.⁹ It is apparent that the President, and his subsequent Executive Order creating the Presidential Advisory Commission on Election Integrity has made these claims to undermine existing laws that provide opportunities for eligible Americans to register and vote.

On the same day, the Presidential Commission on Election Integrity sent letters to state election officials asking for private voter information, DOJ sent a letter to states subject to the National Voter Registration Act (NVRA) that establish requirements for maintaining voter registration lists, inquiring about their procedures for removing voters from the rolls.¹⁰ The parallel actions of the White House and the DOJ suggest that they may be working together to suppress voting rights and raise grave concerns about the prioritization of the Justice Department's civil rights work.

In addition to the actions by the executive branch, in recent years, many states throughout the country have passed legislation that has suppressed voting rights, such as restrictive voter ID laws that serve as barriers to voting access, particularly for people of color, poor people, and the elderly. There has been no evidence that people are casting improper votes. Rather, it shows that many eligible citizens are unable to exercise their right to vote at all.

Criminal Justice

The Civil Rights Division enforces federal criminal laws; operates a prison system; and enforces civil laws protecting us from civil rights violations committed by law enforcement agencies. Prosecuting hate crimes, creating trust between minority communities and law enforcement, and reducing the over-incarceration of minority group men and women are essential to unifying our country.

Hate Crimes. The Civil Rights Division enforces several different federal hate crimes laws, including the Matthew Shepherd and James Byrd Hate Crimes Prevention Act. The Shepard Byrd Act removed some existing jurisdictional obstacles to prosecuting hate crimes on the basis of race and religion, and added new protections against crimes based on gender, disability, gender identity, or sexual orientation. Aggressive enforcement of hate crimes laws is more critical now than ever, as we

⁹ Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, Washington Post Blog (Aug. 6, 2014) https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.1b1818d710f8

¹⁰ Sam Levine, "This DOJ Letter May Be More Alarming Than Trump Commission's Request For Voter Data", *The Huffington Post* (July 5, 2017) <http://huffp.st/q1Ggfps>

are seeing a spike in hate incidents and hate crimes targeting African Americans, Latinos, and other communities of color, Muslims, LGBTQ communities, immigrants, people with disabilities, and refugees. Unfortunately, the Administration's executive orders and policies toward the same communities targeted for hate have undermined the trust that is necessary for communities and victims to freely report hate crimes to law enforcement. While it is critical that the Department of Justice strengthen its commitment to hate crimes enforcement, any actions it takes must be understood in the context of the policies and positions that the Department has taken that promote the marginalization of minority communities and contribute to a climate of fear and hate.

The Division's work over the last several years demonstrates its ability to effectively investigate and prosecute hate crimes. In partnership with U.S. Attorneys' Offices, the Division prosecuted dozens of religion-based hate crimes around the country between 2009 and 2017. In December, 2016, the Division and the U.S. Attorney's office obtained a guilty plea in the first case where a victim was targeted because of gender identity, and in May of 2017, the Defendant was sentenced to 49 years in prison for the murder of a transgender woman in Lucedale, Mississippi. In April 2016, a man pleaded guilty to a federal hate crime for setting a fire that destroyed the Islamic Society of Joplin mosque. In February 2016, two men were each sentenced to 15 years in prison following their convictions of hate crime offenses for their roles in a March 2012 assault of a gay African-American man in Corpus Christi, Texas. In 2011, the Division obtained the convictions of 10 Defendants for their roles in racially motivated assault and murder of an African-American man. In light of the climate of fear and hate confronting minority communities across the country, the Department must redouble this commitment to effectively investigate and prosecute hate crimes.

Deprivation of rights under color of law. It is a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Alleged police brutality is investigated and prosecuted under this law. Recent killings of African-Americans at the hand of law enforcement officers are being investigated.

Discrimination in local law enforcement. The Civil Rights Division also may bring a civil action against law enforcement agencies, prisons, and juvenile institutions to remedy civil rights violations. The Assistant Attorney General will have the responsibility to continue pending investigations, monitor compliance with agreements and court orders involving agencies such as the Ferguson, Missouri police, and initiate new investigations where appropriate.

Under the previous administration, the Division entered into agreements with police departments around the country to reform and monitor activities of departments that have demonstrated a pattern of civil rights abuses. In order for those agreements to maintain their effect, the new leader of the Division must support and enforce the agreements.

Sentencing Reform. The new leadership at the Justice Department has reversed previous “smart on crime” policies to return to an older “tough on crime” view, requiring prosecutors to charge defendants with the most serious crimes possible and seek the harshest sentences possible. These policies raise significant civil rights questions, particularly relating to racial disparity in policing, which leads more people of color to be arrested and thus subject to these harsh sentences.

Educational Opportunities

The Civil Rights Division enforces statutes and court orders that ensure equal access to educational opportunities for all students, regardless of race, sex, national origin, language barrier, religion, or disability. One of the most pressing issues for the Division is the number of outstanding school desegregation cases. Several districts remain subject to a legal order or agreement to desegregate their schools and provide equal educational opportunities to all students.¹¹ The new head of the Division must work closely with the courts and school districts in order to ensure that the districts adhere to those orders.

CONCLUSION

The Assistant Attorney General stands at the helm of protecting civil rights laws and the principles underlying them. The U.S. is at a pivotal point for civil rights, and it is essential that the Civil Rights Division leads civil rights protection efforts by aggressively enforcing civil rights laws. Dreiband’s inexperience in interpreting and enforcing some of the most critical federal civil rights statutes handled by the Civil Rights Division raises important areas of inquiry that should be fully examined by the Senate Judiciary Committee. We look forward to working with the Senate Judiciary Committee to ensure that this nomination process provides the Civil Rights Division with a leader who will be a vigorous force in promoting the cause of equal justice under law.

¹¹ *Banks v. St. James Parish School Board et al.* (2:65-cv-16173)

MISSION STATEMENT

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