REPORT OF ASSISTANT ATTORNEY GENERAL JOHN DOAR IN CHARGE OF THE CIVIL RIGHTS DIVISION

General

The Civil Rights Division was established on December 9, 1957. The Assistant Attorney General is responsible for enforcing civil rights laws and executive orders prohibiting discrimination in voting, employment, public schools and colleges, public accommodations and facilities, and federally financed programs and activities; for intervening in significant cases brought by private litigants involving the denial of equal protection of the laws on account of race; for prosecuting persons acting under color of law and private persons acting in conspiracy to interfere with or to deny the exercise of federal rights; for directing and reviewing investigations arising from complaints concerning matters affecting civil rights; and for enforcing laws prohibiting use of threatening communications in racial disputes; and related statutes. On June 30, 1967, there were 88 lawyers and 104 clerical personnel on duty.

Introduction

Congress has authorized the Department of Justice to seek to eliminate present discrimination, prohibit future discrimination, and correct the effects of past discrimination in several areas that are significant in our political, economic, and social life. In its civil rights litigation the Department asks the courts to grant such relief as will accomplish these objectives. The achievement of these objectives guides the Department in the formulation of its enforcement program.

Fiscal year 1967 was a time of substantial gain in the Department's civil rights program. However, much remains to be done.

Employment discrimination is widespread and invidious and has an especially harsh effect on the Negro who has been the object of discrimination in education. The elimination of employment discrimination is essential to the Nation's domestic health and growth. The Division has been reorganized to enable it to achieve more quickly that goal.

Equal educational opportunity must continue to have a high priority in the enforcement program because only through this

opportunity can members of minority groups acquire the tools needed to compete in our economy and to enjoy personally fulfilling lives. Fiscal 1967 was a time of landmark decisions and vigorous enforcement which are speeding desegregation of public schools in the South and imposing stricter standards for potentially evasive "freedom of choice" plans.

The voting program has already achieved marked advances. A concentrated effort at this time could well lead to almost total elimination of discrimination in this area. As more Negroes exercise the right to vote and thereby have a more effective voice in their local governments, we can expect a decrease in the existence of other civil rights problems.

Since passage of the Voting Rights Act of 1965 Negro voter registration has risen 75 percent in five Southern States. In fiscal year 1967 a significant number of Negroes were candidates—some successful—for public office.

There are encouraging signs that State and local officials are assuming more of their responsibilities to provide equal protection in the administration of justice. We are unfortunately not yet at a point where the federal responsibility is unneeded. Not only must the Department be prepared to act promptly and vigorously in cases involving interference with the exercise of federal rights in traditional areas of our attention such as the South, but it must also be in a position to be responsive to acts of police misconduct in urban areas in the North. Sections 241 and 242 of Title 18 of the United States Code, post Civil War statutes which respectively provide penal sanctions for those who conspire to, and those who under the color of the law seek to, deny constitutional rights of the individual, were given new life by important court decisions.

These are the highlights of the past fiscal year. The year also saw the resolution of cases involving desegregation of restaurants, hotels, and other places of public accommodation and public facilities. The Office of the Special Assistant to the Attorney General for Title VI stepped up its coordination of the efforts of federal agencies to achieve the goal of nondiscrimination in federally financed programs and activities.

EQUAL EMPLOYMENT OPPORTUNITY

Title VII of the Civil Rights Act of 1964 became effective on July 2, 1965, for certain employees, unions, and employment agen-

cies. On each succeeding July 2 until July 2, 1968, the coverage of Title VII increases by steps until it applies to employers with 25 employees and unions with 25 members. At the close of fiscal year 1967, the Civil Rights Division has filed five suits to secure relief from discrimination in employment. In addition, the Division has intervened in seven suits on behalf of the Equal Employment Opportunity Commission, and has participated as *amicus curiae* in another case. The *amicus curiae* participation, four of the five suits seeking injunctive relief, and five of the seven interventions were instituted during fiscal year 1967.

The Civil Rights Division has received referrals from the Equal Employment Opportunity Commission, complaints from individual citizens, and has developed through its own investigation, information indicating patterns and practices of discrimination. When an investigation of the information received from any of these sources has been carried to the point where the Division concludes that a pattern and practice is established, the potential defendant has been informed that the Deparment of Justice has concluded that he is not in compliance with the Act. He is informed that a program will have to be adopted to correct the pattern and practice; and that if voluntary compliance can not be agreed to, the Department has the responsibility of instituting litigation to seek compliance. He is invited to consult with the Civil Rights Division if he has questions about the program necessary to bring about compliance with the law. Almost invariably some negotiation has ensued. If after the negotiation it has not been possible to agree upon a satisfactory program, the Division has recommended to the Attorney General that suit be filed.

Our overall objective in the employment field is to maximize the the elimination of discrimination and more specifically to:

a. Have a concentrated enforcement program in as many cities as possible throughout the country that have a significant Negro population.

b. Develop legal principles under Title VII to make clear its prohibitions and the relief potentially available under it.

c. Supplement and support the enforcement programs of other agencies of the government such as the EEOC and OFCC that have equal employment opportunity responsibilities.

Some of the cases filed during fiscal year 1967 are as follows:

Ohio

On April 14, 1967, a suit was instituted against Local 683 of the International Brotherhood of Electrical Workers, in Columbus, Ohio. The complaint alleges that "the defendant follows a policy and practice of discrimination against Negroes, on account of their race, with respect to Union membership and with respect to employment in the electrical trades . . . . Negroes have been totally excluded from apprenticeship and membership—." The lawsuit was in its preliminary stages as the fiscal year closed, but initial legal victories have been won with the denial of the defendant's motion to dismiss and motion to require plaintiff to file a more definite statement. The case was a first step in the extension of the Division's activity to the northern states; and it represents, along with several other employment discrimination cases filed by the Division during the year, the increased tempo of the enforcement of Title VII.

Louisiana

On December 15, 1966, the United States sued Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers in New Orleans, Louisiana, charging a pattern and practice of discrimination in violation of Section 707. The complaint was filed after referral of the case to the Department of Justice by the Equal Employment Opportunity Commission, which after an investigation had found reasonable cause to believe the Union to be operating in violation of Title VII, and, thereafter, had been unable to conciliate the matter.

After a three-day hearing, the Court found that local 53 effectively controlled employment and training opportunities in the insulation and asbestos trade in the New Orleans area; that there was no formal apprenticeship program in the industry, and that the sole opportunity for learning the trade was on-the-job training, available only to persons working under the auspices of Local 53.

About 1200 persons were employed as asbestos workers for contractors bound by contract to recognize Local 53 as the exclusive bargaining agent for such employees. There were 282 workers, including 64 improvers (apprentices) who were members of Local

53. The remaining workers were members of other locals, or were non-members working on work permits issued by the Union. None of these workers were Negroes.

As to admission to the Union, the Court found that to become a member, the applicant must obtain written recommendations of three members and obtain approval of the entire membership voting by secret ballot. This Union followed a policy of restricting membership to sons and close relatives. For example, 69 of 72 first-year improvers who were admitted during the previous four years were relatives of members.

The Union refused to consider Negroes for membership and refused to refer Negroes for employment. Specifically, the Union refused to consider nine young Negroes seeking employment as asbestos workers either for referral or membership.

Based on all this, the Court concluded that affirmative and mandatory preliminary injunctive relief was required. The defendant was enjoined from excluding persons from membership on the basis of race. All present requirements for membership were eliminated. Four persons (three Negro tradesmen and one Mexican-American applicant) were ordered admitted to membership; nine Negroes were ordered to be referred to jobs as helpers.

Finally, the Court ordered the Union to develop standards for admission which included objective criteria related to the trade.

North Carolina

The Department also instituted a Title VII suit in Raleigh, North Carolina: *United States* v. *Dillion Supply Company*, the first case to be filed by the Department against a corporation. The company is charged with discrimination in hiring, initial assignment, promotions, and failure to correct pre-existing segregated facilities. This case was still pending at the close of the fiscal year, with defendant's preliminary motion for dismissal having been denied.

Alabama

On June 23, 1967, the Department filed a Title VII case in Birmingham, Alabama, *U.S.* v. *H. K. Porter Company, Inc., Connors Steel Division*. The charges involving this company had been referred to the Department by the Equal Employment Opportunity Commission. The suit was filed after extensive fact-gathering by Justice Department attorneys, and correspondence with company

officials informing them that investigation had indicated discriminatory employment practices at their Birmingham plant.

Missouri

In a suit filed February 4, 1966, *United States* v. *Building and Construction Trades Council, et al.*, an agreement was reached during the fiscal year, on June 10, 1967, with three of the defendants: Pipefitters' Local No. 562 Plumbers' Local No. 35, and the Trades Council. The defendants in the case were charged with following a policy of discrimination in recruitment, membership, and other practices tending to restrict employment opportunities.

Following negotiations, defendants Pipefitters and Plumbers adopted settlement terms under which they undertook to do the following:

1. Consider all present and future applicants for membership, referral, and apprenticeship without discrimination.

2. Develop community relations programs designed to dispel from the minds of Negroes any notion that they are not welcome in these locals equally with white persons and to make prospective Negro applicants equally aware of union opportunities.

3. Institute a program to stimulate interest in these trades among young Negroes and to solicit qualifiable Negroes.

4. Encourage programs with contractors for recruiting and placing Negroes in summer helper positions equally with white persons.

5. Apply objective uniform standards, reasonably related to the job requirements of the trade, in passing upon the qualifications of applicants for apprenticeship, membership, and referral. The settlement provided further that during the next five years or until the minority races within the jurisdictional limits of the Local are fairly represented in the Local's membership, whichever occurs first:

(a) No standard shall be applied to any Negro applicant for membership that is more stringent than any standard used during the last five years.

(b) All Negro applicants for membership meeting the objective standards shall be accepted without regard to any numerical limitation on membership.

(c) Negro non-members shall be referred for employment on the same basis as members, without any preference being given

for union membership, length of prior work experience (except that minimum length of experience, applicable to all, may be set), or whether prior experience was with any particular employer.

6. Publicly announce and disseminate the Union's procedures and standards for membership, apprenticeship, and referral.

7. Maintain records of applicants for membership, work referral and apprenticeship training, and allow the Department of Justice to review these records.

Defendant Trades Council proposed to co-operate with and encourage the two Unions in the implementation of their programs. On June 14, 1967, the Department agreed to a dismissal without prejudice against the Plumbers, Pipefitters, and Trades Council on the basis of their proposed programs.

On June 15, 1967, trial began against the remaining defendants, the Electrical Workers and the Sheet Metal Workers, and ended on June 20, 1967. At the close of the fiscal year, no decision had been handed down by the Court, pending submission of briefs.

Other cases

The Department also participated as *amicus curiae* in the case of *International Chemical Workers Union and Nathan Allen, et. al.* v. *Planters Manufacturing Company* (N. D. Miss.). The issue on which the Department briefed the court was whether a labor union is a person aggrieved within the meaning of Section 708(a) (e) of Title VII of the Civil Rights Act of 1964. The charge of racial discrimination against Planters had been filed with EEOC first by the Union and subsequently by individual plaintiffs. EEOC initially held that the Union cannot be a person aggrieved, but on May 6, 1966, the Commission in an opinion by its General Counsel reversed its prior view and held that the Union is a person aggrieved. The district court denied a motion to dismiss the complaint of the Union, basing its holding on the substantial weight which is customarily given to an administrative agency's interpretation of an act which it is responsible for administering.

The United States represented the EEOC in three suits by private litigants under Section 706: *Evenson* v. *Northwest Airlines, Inc.*, Alexandria, Virginia; *Moody* v. *Albermarle Paper Company*, Roanoke Rapids, North Carolina; and *Robinson* v. *P. Lorillard Company*, Greensboro, North Carolina. In each of these cases, de-

fendant, in a motion to dismiss, raised the issue of plaintiff's failure to exhaust administrative remedies before bringing suit.

Since this involved the procedures followed by the Equal Employment Opportunity Commission, the Department of Justice, upon request by the Commission, represented the Commission in its intervention. Defendants' motions to dismiss in the three cases were subsequently denied. In a fourth case involving the same issue, *Ward* v. *Firestone Tire and Rubber Company*, in Memphis, Tennessee, the Court decided the case on other grounds. However, it pointed out that the result contended for by the defendant would anomalously penalize the private plaintiff for a failure of the Commission in the performance of its statutory duties.

Two other private suits involving similar limited interventions by the Department, *Dent* v. *St. Louis-San Francisco Railway Company*, Birmingham, Alabama, and *Pettway* v. *American Cast Iron Pipe Company*, Birmingham, Alabama, were dismissed by the District Court for the Northern District of Alabama in March 1967 on the grounds that the Commission failed to follow the correct conciliation procedures. The decisions, in both cases, were appealed in May 1967.

Pending in the District Court for the Eastern District of Louisiana at the close of the fiscal year was a case in which the Department also represented the Equal Employment Opportunity Commission in its intervention, *Hill* v. *Crown Zellerbach Corporation*, in Bogalusa, Louisiana. On June 15, 1967, the Commision's motion to intervene was granted. A motion to dismiss has been denied with respect to the issue of the Commission's administrative proceedings.

SCHOOL DESEGREGATION

There were two primary needs which governed the school litigation program in the years immediately following the enactment of the Civil Rights Act of 1964. The first was to secure recognition of *Brown* v. *Board of Education* as the law in school systems throughout the South. At the time *Brown* was decided there were approximately 4,000 school systems with both Negro and white students in the 17 border and Southern states that maintained dual school systems based on race; for the 11 Southern states alone, there were 3,000 such systems. By July 1964, 10 years later, this number had been reduced; but there still remained more than 1,500 dual school

systems which had made no movement towards voluntary compliance with the *Brown* decision. Therefore, it became necessary for action to be taken to initiate the desegregation process in many Southern school systems.

The second need was to use federal court litigation to support the school desegregation program of the Department of Health, Education, and Welfare under Title VI of the 1964 Act. Under it, Congress has empowered executive agencies to terminate funds to federally assisted programs where racial discrimination exists. This grant of power, together with the enactment of a massive educational grant program, the Elementary and Secondary Education Act of 1965, created a meaningful administrative remedy to secure compliance with the law.

The following chart gives a statistical picture of the Department's school litigation program by state, by type of case, and by year:

DEPARTMENT SCHOOL LITIGATION

	'63	'64	1965					1966					1967					State
			IV	VI	IX	a	g	IV	VI	IX	a	g	IV	VI	IX	a	g	Totals
Alabama	1[b]	2[c]	1		3		1	4		6		1[d]		1	1			21
Arkansas								2		2		1						5
Florida										3	1	1						5
Georgia					1					1		1	4					7
Louisiana			1[e]		5			7		10[f]			3					26
Mississippi			4		8[g]	1		13	1[h]	2[f]			6					40
North Carolina										2[f]			3					5
South Carolina					1[f]			2		1	6[i]	1	1					12
Tennessee			1		1			2		2			1					7
Texas					1										1			2
Virginia										1					1			2
Sub Total	1	2	7		20	1	1	35	1	30	7	5	18	1	3			
Grand Total	1	2			29					78				22				132

[a] The column headings "IV", "VI", and "IX", indicate the title of the Civil Rights Act of 1964 under which the Department is participating in the cases. The letter "a" indicates that the Department has participated as *amicus curiae* in the case. The letter "g" indicates that the Department is involved in a suit challenging the legality of the guidelines.

[b] On July 15, 1963, the United States was appointed *amicus curiae* in the case of *Lee, et al. v. Macon County Board of Education*. The United States filed a Motion to Intervene on August 31, 1966, challenging the tuition grant statutes of Alabama.

[c] On May 18, 1964, the United States was appointed "*amicus curiae* and party" in two cases in the Middle District of Alabama: *Carr, et al. v. Montgomery County Board of Education* and *Harris et al v. Bullock County Board of Education*.

[d] On November 22, 1966, the United States intervened as plaintiff and *amicus curiae* in the case of *NAACP v. Wallace*, a case which challenged the legality of an Alabama anti-guidelines statute.

[e] On April 8, 1965, the Government filed a complaint to desegregate the trade schools in Louisiana in the case of the *United States v. Louisiana State Board of Education*.

[f] One of the cases included in this figure involves a challenge to the state's tuition grant statutes.

[g] One of the cases included in this figure involved a challenge to a Mississippi statute which required that public school students must pay a tuition fee in order to attend a school in a district other than the resident district of their parents or guardians.

[h] The case of *Lee v. United States*, filed October 13, 1965, challenges the constitutionality of Title VI and the guidelines. The United States filed a counter-claim on December 10, 1965, asking the court to order the Forrest County school system to desegregate. An order, complying with the Jefferson decision, was entered on May 9, 1967.

[i] On May 20, 1966, the United States was appointed *amicus curiae* in suits to desegregate six South Carolina school districts (Charleston No. 2, Clarendon No. 1, Darlington County, Greenville County, Orangeburg No. 5 and Sumter County) which were consolidated for argument before the District Court for the purpose of formulating a model decree.

During fiscal year 1967, the Division sustained and broadened the school litigation program to which it gave a high priority in fiscal year 1966. At the direction of the Attorney General, the Division intervened in those cases which satisfied the criteria established for intervention. Most of the resulting law suits were brought to enjoin local school systems to desegregate. The litigation program, however, also included participation in other types of law suits: challenges against the state-wide tuition grant programs in Alabama, Louisiana, Mississippi, North Carolina, and South Carolina, in order to prevent those states from establishing so-called private segregated schools as an alternative to desegregated public schools; six lawsuits in Alabama, Arkansas, Florida, Georgia, and South Carolina in which the principal, if not the sole, issue was the legality of HEW school guidelines.

In addition, the court holdings in two cases in which the Department participated constituted significant advances. The first was *United States* v. *Jefferson County Board of Education*, consisting of seven school desegregation cases from Alabama and Louisiana consolidated on appeal in the Fifth Circuit. The Court of Appeals was urged to adopt a uniform desegregation plan based on HEW standards, which would be applicable to school systems in the circuit, and to define the constitutional duty of school boards not only to allow Negro children into white schools, but also to liquidate the dual system. These cases were strenuously litigated for the better part of a year.

In its decision, entered December 29, 1966, and affirmed *en banc* March 29, 1967, the Court reversed district court orders approving freedom of choice plans which did not meet constitutional standards. The Court set out a specific decree for district courts to enter which gave great weight to the HEW statement of guidelines for the mechanics of the plan.

Four aspects of the decision are particularly significant: (1) the holding that *de jure* segregated school systems must reorganize into a unitary, non-racial school system as well as assign students to schools on a non-racial basis; (2) the entry of a uniform decree for circuit-wide application; (3) the inclusion in the decree of specific methods designed to assure the fair operation of the freedom of choice method of pupil assignment; and (4) the principle that Courts will give great weight to HEW guidelines. The Court required school boards to "take affirmative actions to disestablish all school segregation and eliminate the effects of the dual school

system." In order to effectuate this reorganization, the desegregation plan set forth requires that services, facilities, activities, and programs must be conducted on a non-discriminatory basis, and that school facilities must be equalized.

The second such milestone was *Lee* v. *Macon*, decided March 22, 1967. This suit was originally a private action brought by Negro school children against the School Board of Macon County, Alabama. To represent the public interest, the Court made the United States a party and *amicus curiae* in 1963. The Alabama State Board of Education and its members were added as defendants after they had interfered with the desegregation process in the county.

A three-judge panel entered a preliminary injunction in July 1964, enjoining the State defendants from interfering with desegregation, ordering them to promote and to encourage the elimination of racial discrimination in Alabama public schools, and enjoining payments of the tuition grant law for attendance at segregated private schools. The court later entered a four part order which laid down rules for the Board to follow in its activities relating to school construction, location, and consolidation; teachers; transportation; finances; and trade schools, junior colleges, and state colleges. Second, it formulated a plan for school desegregation applicable to each local county and city system not already under court order to desegregate. Third, it ordered the State Board to keep records and make reports to the court concerning its progress towards desegregation. Fourth, it outlawed the tuition grant program.

In August 1966, the United States intervened as a plaintiff under Title IX of the 1964 Civil Rights Act to attack a new tuition grant statute enacted after the 1964 decision. The Department undertook to determine what role the office of the State Superintendent of Education played in the perpetuation of the dual school systems throughout the state and to see whether that role could be reversed so that it could become an instrument to secure compliance with *Brown*. At various times, more than a dozen attorneys were used in this case and what emerged were new procedures and techniques for desegregating school systems on a state-wide basis using a single forum.

In its decision of March 22, 1967, the Court found that the State Board of Education had continued to interfere with and discourage school desegregation:

> Not only have the defendants, through their control and influence over the local boards, flouted every effort to make the Fourteenth Amendment a meaningful reality to Negro school children in Alabama; they have apparently . . . committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by *Brown* v. *Board of Education*.

Other School Cases

In *Robinson* v. *Shelby County Board of Education* (W. D. Tenn. 1967), a case in which the Department intervened, the consent decree entered after the government had initiated contempt proceedings against the Board is important for its provisions relating to the desegregation of faculty. The decree states that "the faculty of a school will be considered desegregated when the ratio of white teachers to Negro teachers in the school is the same, with a reasonable leeway of approximately 10 percent, as the ratio of white teachers to Negro teachers in the whole number of certified personnel in the Shelby County Public School System." The school board is required to make cross-racial faculty assignments whenever possible until full desegregation has been achieved.

In *Coppedge* v. *Franklin County, N. C. Board of Education*, 273 F. Supp. 289 (E.D. N.C. 1967), in which the United States was plaintiff-intervenor, Judge Algernon Butler entered an order on August 21, 1967, invalidating the county's "freedom of choice" plan on the ground that third party intimidation had prevented choice from being free in fact. The order directed the Board to desegregate by means of geographic attendance zones, school or grade consolidation, or both. This is the first case in the United States in which a court ordered the abandonment of the free choice system as such on any grounds.

In *Corbin* v. *County School Board of Loudoun County* (E.D. Va. 1967), in which the United States was plaintiff-intervenor, Judge Lewis entered an order on August 29, 1967, directing the conversion from a form of free choice or free transfer system to one based on unitary geographical attendance zones in which there would be no Negro schools, to be completed sometime in 1968-69. The decision, based on the proposition that there was no rational basis in that county for the preservation of all-Negro schools, was the first in which the Department of Justice participated in which

any form of free choice was set aside on any basis other than intimidation.

Most of the resources of the Civil Rights Division committed to the school program were involved in litigation during fiscal year 1967. Significant efforts were devoted to advising HEW in the carrying out of its program pusuant to Title VI of the Civil Rights Act of 1964. As of the end of fiscal year 1967, 60 school districts in six states in the South had had their federal funds terminated because of failure to comply with the guidelines of HEW. These school districts were distributed as follows: Arkansas, 7; Georgia, 15; Louisiana, 17; Mississippi, 15; South Carolina, 1; and Virginia, 5. Where the Attorney General has jurisdiction under Title IV of the Civil Rights Act of 1964 and by receipt of a complaint, it is the Department's policy to seek court orders bringing the operations of such school systems into compliance with the Constitution and federal law.

VOTING

Administration of the Voting Rights Act

The objective of the Department's program in voting is to see that minority group citizens have a full opportunity to register and are permitted to vote freely and comfortably with the security that their votes will be fairly counted, all without regard to race.

Since the passage of the Voting Rights Act of 1965, Negro registration in the five States (Alabama, Georgia, Louisiana, Arkansas, and South Carolina) in which federal examiners have been assigned has increased by about 75 percent. Negroes have participated meaningfully in elections and several Negroes have been elected to local offices.

This result was accomplished, (1) by the voluntary compliance of many local officials; (2) by the appointment and functioning of federal examiners and observers in problem counties; and (3) by the organized efforts of Negro leaders and groups to stimulate registration.

The following chart shows in tabular form the increase in Negro registration by state and the results of the federal examiner program:

VOTER REGISTRATION AT END OF FISCAL YEAR 1967[1]

		Voting Age Population (1960)	Pre-Act Registration	Post Act (Registrar)	Registration By Examiners	Total Registered	Percent
					(6-30-67)		
Alabama	W	1,353,058	1,059,057	140,621	5,239	1,204,917	89.1
	N	481,320	112,509	73,500	60,210	246,219	51.2
	Unk.			13,719		13,719	
					(9-30-67)		
Georgia	W	1,797,062	1,308,944	131,396	16	1,440,356	80.2
	N	612,910	254,216	65,373	3,297	322,086	52.7
	Unk.		105	22,753		22,858	
					(7-31-67)		
Louisiana	W	1,289,216	1,019,281	117,455	1,614	1,137,350	88.2
	N	514,589	164,997	94,695	22,792	282,484	54.9
	Unk.						
					(7-31-67)		
Mississippi	W	748,266	476,915	93,458	181	570,554	76.3
	N	422,256	30,677	89,589	55,676	175,942	41.7
	Unk.		100,426	72,953		173,379	
					(6-30-67)		
S. Carolina[2]	W	895,147	686,701	44,379	16	731,096	81.7
	N	371,104	142,802	42,609	4,606	190,017	51.2
	Unk.						

[1] Statistics are as of 7-31-67 for all states except Georgia which are as of 8-31-67.
[2] Complete re-registration started on September 1, 1967.

With few exceptions, elections in these areas have been conducted fairly and Negro participation has been good. It is likely that the federal observer program has had a significant influence in insuring fairness in local elections; but we have had few election complaints from counties where there were no federal observers. The following table reflects the use of federal observers, and the extent to which Negroes have participated in elections:

Elections With Federal Observers	Number of Counties Designated for Examiners	No. of Counties With Observers	No. of Observers	No. of Negro Candidates	Negroes Elected
ALABAMA					
5/03/66	13 out of 67	7	357	110	5
5/31/66		7	382	23	3
11/08/66		7	84	45	8
GEORGIA					
11/08/66	4 out of 159	1	22	unknown	unknown
LOUISIANA					
8/13/66	9 out of 64	6	195	12	1
9/24/66		5	111	8	0
11/08/66		5	91		3
MISSISSIPPI					
6/07/66	34 out of 82	14	205	6	0
11/08/66			14	216	8
8/08/67		27	588	64	16
8/29/67		14	331	15	0
SOUTH CAROLINA					
6/14/66	2 out of 46	2	302	24	5

The Division's program of enforcement of the Voting Rights Act over the last two years has included a constant review of the progress of registration in counties having relatively low Negro registration; the designation of counties for federal examiners where needed; surveys of local conditions in advance of elections in counties where there may be potential election problems; and the appointment of federal observers to observe elections where needed. We have participated in four lawsuits challenging the fairness of elections; and it is probable that the thorough work of Departmental attorneys with local officials has contributed to the prevention of irregularities, fraud, and discrimination in the conduct of local elections.

LITIGATION

In *United States* v. *Jerome K. Post, Jr., et al,* the Department sought an order setting aside a local election of November 1966 to the Madison Parish, Louisiana, School Board on the grounds that the Negro candidate was discriminated against through extended absentee voting privileges rendered to whites. The Department maintains that the ultimate responsibility for the racial distinctions which permeated the election lies with Mr. Post who engaged in practices for the purpose and with the effect of depriving Negro citizens of their right to vote and right to have their vote counted. The government contends that Mr. Post's alleged activities resulted in the election of the white write-in candidate. The voting population in Madison Parish numbers 5,181 Negroes and 3,334 white persons. The district court, Judge Dawkins, decided the case in January 1968, setting the election aside on grounds that the election officials had engaged in discriminatory practices.

Three southern counties have petitioned for release from the provisions of the Voting Rights Act. The United States has consented to releasing Wake County, North Carolina. A suit involving Gaston County, North Carolina has been tried and is awaiting decision. The Nash County, North Carolina case is still pending. In the Gaston County case, the United States is arguing that the county should not reinstitute a literacy test on the grounds that white illiterates have voted for many years and that such tests are a greater burden on Negroes.

EQUAL PROTECTION OF THE LAWS

The Department's civil rights program has as one of its key objectives to insure fair and equal administration of justice on the State and local levels in the investigation, arrest, detention, prosecution and trial of alleged criminal offenses; and in the bringing or defending of civil actions.

In the past few years, when the civil rights movement was very active in the deep South, the Department's enforcement program necessarily emphasized the problems involved in the failure of local law enforcement officials to provide proper protection to Negroes and civil rights workers. Thus, considerable Departmental resources have been committed to the criminal prosecutions involved in the killing of Colonel Penn, Mrs. Liuzzo, and the three civil rights workers in Neshoba County, Mississippi; and to civil suits involving police officers and Klan members in Montgomery, Alabama, Sheriff James Clark in Selma, Alabama, and police officers and Klan members in Bogalusa, Louisiana. In connection with this phase of the program, the Civil Rights Division has presented to the courts legal principles which, if accepted, would require local law enforcement officials to assume greater responsibility in providing protection, and would more effectively deter private conspirators from engagin acts of violence designed to punish or interfere with the exercise of federally-secured rights.

As an integral part of the effort to correct racial injustice in the local administration of justice, the Civil Rights Division has participated in 8 cases in district courts and 4 appeals involving racial discrimination in State jury selection systems. Two of these were instituted in fiscal year 1967. The effort has been to reform discriminatory State jury selections systems through litigation by developing legal principles and judicial relief which would insure that State juries are selected from a fair cross section of the community. The courts have generally accepted the position urged by the Division in those cases. The case-by-case method, however, normally focuses on a particular county. It is therefore a slow method of reform. The Department has proposed legislation to secure needed reforms on a broader scale.

In August 1966, the Department intervened in *Pullum* v. *Greene*, a case alleging that Negroes and women were discriminated against in the jury selection process in Terrell County, Georgia. Trial in this case was held on February 20, 21, and 22, 1967. After the trial

had been held, the defendants in the case filed a motion to dismiss on the basis that the new jury selection process law passed by the Georgia legislature on March 30, 1967, made the case moot. The new legislation required county jury commissioners to compile immediately a list consisting of a "fairly representative cross section of the upright and intelligent citizens of the county from the official voter's list" to serve as petit jurors. On June 30, 1967, Judge Elliott (M.D. Ga.), entered an order dismissing the complaint. The Department has appealed.

The Department also moved to intervene in *Broadway* v. *Culpepper*, a Baker County, Georgia, jury exclusion case on June 26, 1967.

On November 30, 1966, Judge Daniel H. Thomas entered orders in three jury exclusion cases in Alabama, (S.D. Ala.) involving the jury selection processes in Perry, Hale, and Wilcox Counties. Judge Thomas ordered the jury commissioners in the three counties to refill their jury boxes without regard to race, and to make periodic reports to the court. On June 14, 1967, the Department filed motions for further relief in all three cases, alleging that the names selected for the jury rolls continued to be discriminatorily selected. A hearing on these motions was pending as the fiscal year 1967 ended.

In fiscal year 1966, the Supreme Court reinstated indictments in two cases which had been dismissed in district courts. One, *United States* v. *Price*, concerning the slaying of three civil rights workers near Philadelphia, Mississippi; the other, *United States* v. *Guest*, concerned the fatal shooting of Col. Lemuel Penn, a Negro educator, as he drove through Georgia. Each involved the 1870 federal statute outlawing conspiracies to deprive citizens of their civil rights. On July 8, 1966, two Ku Klux Klansmen, previously acquitted of a state murder charge in the Penn case, were found guilty of violating the Federal statute. Each received the maximum sentence of 10 years. Four co-defendants were acquitted. The Fifth Circuit Court of Appeals upheld the conviction of the two Klansmen on May 15, 1967.

On October 20, 1967, seven women and five men, all white, selected from a panel representing a cross section of the citizens of Southern Mississippi, announced seven verdicts of guilty in *United States v. Price*. These ended a three-year effort to try members of the White Knights of the Ku Klux Klan of Mississippi accused of conspiring to kill three civil rights workers in Neshoba County, Mississippi in 1964. The three year history of the *Price*

case is marked by the district court's dismissing the indictments twice and by a direct appeal to the United States Supreme Court.

The events giving rise to this case occurred on June 21, 1964, when three civil rights workers, Michael Schwerner and Andrew Goodman, both white and from New York, and James Chaney, a Negro from Meridian, Mississippi, were apprehended by Deputy Sheriff Cecil Price. At this time, the three civil rights workers were returning to Meridian, Mississippi, from a rural area in Neshoba County where they had been inspecting a Negro church burned on June 16, 1964.

Price charged Chaney with speeding and ordered the two young white men held for investigation. The three victims were detained for over six hours. At about 10:30 p.m., Price allowed Chaney to post bond and released the three from the Neshoba County Jail. They then continued their trip to Meridian, Mississippi.

As the indictment alleged, and the facts subsequently presented at trial proved, Price released the victims for the purpose of intercepting and killing them. After their release, Price and the other defendants stopped the three civil rights workers and took them to a secluded dirt road where they were shot. The bodies were taken from that spot to a field where an earthen dam in the initial stages of construction was used as a burial site.

On August 4, 1964, agents of the FBI, directing the use of heavy earth moving equipment, uncovered the remains of the three victims nearly fifteen feet below the top of the levee. Autopsies confirmed the three victims died of gunshot wounds.

For approximately two weeks in the early fall of 1964, and again in January of 1965, a federal grand jury met to consider this case. Following the January meeting, the Grand Jury returned two indictments. The first indictment charged three law enforcement officials and fifteen private citizens with violating 18 U.S.C. 241 by conspiring "to injure, oppress, threaten and intimidate" the victims "in the free exercise and enjoyment of the right and privilege secured to them by the Fourteenth Amendment to the Constitution of the United States, not to be deprived of life or liberty without due process of law by persons acting under color of the laws of Mississippi."

The second indictment contained four counts. The first count alleged that all eighteen defendants violated the general conspiracy statute (18 U.S.C. 371) by conspiring to violate 18 U.S.C. 242. The second, third, and fourth counts charged all eighteen defendants

with violations of 18 U.S.C. 242 with respect to each of the three victims.

On February 25, 1965, the District Court dismissed the first indictment, based on Section 241, and dismissed the fifteen private defendants from the last three counts of the second indictment. In dismissing the first indictment the district judge concluded that Section 241 was intended to protect only federally created rights and not those rights merely *guaranteed* by the laws of the United States.

The judge sustained the first count of the second indictment, based on the general conspiracy statute, by holding that private persons could conspire with state officials to violate Section 242. The judge stated that it is immaterial that the private persons were not acting under color of law during the conspiracy. As to the remaining three counts, the judge concluded that the private defendants could not be prosecuted for substantive violations of Section 242 because the indictment failed to charge that they did anything as officials acting under color of law. The judge pointed out that the indictment contained allegations of only three defendants acting as officers.

A direct appeal of these decisions was taken by the Department to the United States Supreme Court. Mr. Justice Fortas writing for an unanimous court reversed the district Court and sustained both indictments in their entirety.

The Supreme Court dealt initially with the second indictment based on Section 242. The Court stated that "those who took advantage of participation by state officers in accomplishment of the foul purpose alleged must suffer the consequences of that participation." The Court ruled that it is enough that he be a wilful participant in joint activity with the State or its agents.

Turning to the first indictment, Judge Fortas said that the impact of the lower Court's ruling is that Section 241 "does not include rights protected by the Fourteenth Amendment." The Justice pointed out that both Sections 242 and 241 include rights or privileges secured by the Constitution or laws of the United States.

The second portion of the Court's decision simply states that the language of Section 241 is plain and unlimited. The "language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution," including those rights created by prohibitions of state action.

Following the Supreme Court's decision, *United States* v. *Price*

was set for trial but on October 7, 1966, the indictments were again dismissed. The defendants had challenged the composition of the grand jury which returned the indictments by alleging that the jury panel used in the Southern District of Mississippi did not represent a cross section of the citizens of that District as required by the Constitution and federal laws. More specifically the defendants contended that the jury panel contained insufficient names of Negroes, Indians and women. In view of the procedures used to select the jurors, the Government admitted the infirmities and agreed that the indictments should be dismissed.

The Court re-constituted the jury box, and a new Grand Jury was summoned to consider the matter. On February 27, 1967, nineteen subjects were indicted for violating Section 241. No attempt was made to secure Section 242 indictments.

After a postponement of a May trial date, the trial began on October 9, 1967, and continued until October 18, when the issue was submitted to the federal jury. The Jury brought in a verdict of guilty as to Deputy Sheriff Cecil Price and six of his co-defendants. This was the first successful jury conviction of white officials and Klansmen in the history of Mississippi for crimes against Negroes and civil rights workers.

PUBLIC ACCOMMODATIONS

The objective of the Department is to enforce Title II of the Civil Rights Act of 1964 to insure that no person is denied the benefits of any public accommodation on account of his race, religion, or national origin. Following the enactment of Title II there was widespread voluntary compliance with its requirements. Although the Department has not made a statistical survey of the extent of voluntary compliance, it is known from observation by Division attorneys that many major hotels and motels desegregated immediately.

Despite such widespread voluntary compliance, there continues to be a steady stream of complaints of violations, most often from the non-urban areas. During the past three years the Department has participated in 93 lawsuits involving discrimination in public accommodations.

Illustrative of the Department's efforts to enforce Title II are the actions taken by it in the fall of 1966, when widespread noncompliance in rural North Carolina was reported. Eleven Title II

suits were filed. Judgments have been secured in eight cases, seven of them by consent.

Two of the remaining three are still in litigation; the third, a disingenuous "private club", discontinued the use of the segregated portion of the premises. Several of the judgments have required the discontinuance of service to Negroes in the kitchen or the "back room", and others have required the posting of compliance orders. Similar results have been obtained in six cases filed in Virginia.

The highly visible nature of the results under Title II has contributed to the elimination of the caste system in a way that reaches into the daily lives of the Negro community.

PUBLIC FACILITIES

Even though it has been clear for 13 years that separate but equal public facilities for the races is unconstitutional, voluntary compliance has been slow. Title III of the Civil Rights Act of 1964 authorizes the Attorney General to institute suits to desegregate public facilities under certain conditions.* The Attorney General is also authorized to intervene under Title IX in cases of general public importance involving the desegregation of public facilities. Thus far the Department of Justice has participated in 10 public facility cases, three of which were filed in fiscal year 1967.

During the year, the number of complaints concerning public facilities investigated or considered by the Civil Rights Division numbered 209. The largest number of these complaints, 78, concerned segregated courtrooms in the South. There were 44 complaints involving cafes and hospitals, 20 involving public parks, and 19 involving swimming pools, and a few involving tennis courts, golf courses, libraries, auditoriums, and the like. Almost all of these complaints arose from Southern and Border States. Mississippi had the largest number (82), Louisiana (33), Georgia (28), Alabama (21), Tennessee (11), North Carolina (5), Texas, Florida, and South Carolina (6 each). The remaining were scattered throughout the United States.

NON-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI of the Civil Rights Act of 1964 imposes upon each Federal department or agency which is empowered to extend

* He must receive a signed complaint; he must believe the complaint is meritorious; and he must certify that the complainant is unable to bring suit and that the institution of an action will materially further the orderly progress of desegregation in public facilities.

federal financial assistance the primary responsibility for effectuating the provisions of that Title that no one "be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Twenty-five departments and agencies, including all of the major departments, extend such assistance to such programs for schools, hospital, state employment services, public housing, urban renewal, agricultural extention services, and a host of other programs and activities. Under E.O. 11247, the Attorney General has the responsibility to provide leadership and coordination to these departments and agencies and to achieve "consistent uniform policies, practices and procedures with respect to the enforcement of Title VI."

The Department's primary objective in regard to programs administered by other government agencies is to reduce, and eventually to eliminate, segregation and other discrimination based upon race, color, or natural origin in the administration of all federal and federally assisted programs and activities. This objective involves more, of course, than the elimination of blatant and conscious acts of discrimination; and it encompasses the affirmative action required of federal, state and local officials to achieve the goal of equality of opportunity for Negroes and other members of minority groups in federal or federally assisted education, housing, health, welfare, and agricultural programs, and employment.

In addition to this formal delegation, the Attorney General, as the federal government's chief law enforcement officer, traditionally has been the President's principal adviser on civil rights problems, and in the formulation of civil rights policies and programs. For this reason, and because civil rights problems so frequently involve questions as to what the law requires or permits, the other federal agencies have looked and continue to look to the Attorney General for leadership and advice in matters having a civil rights impact, whether or not they are strictly within the confines of Title VI or any existing statute, order or regulation.

Following the promulgation of Executive Order 11247, in September 1965, a Special Assistant to the Attorney General for Title VI has headed an office which has had the primary responsibility of fulfilling the Department's coordination duties under that Order, and to perform similar functions.

In close consultation with the 25 departments and agencies affected, that Office reviews, develops, formulates, and drafts regulations, policy statements, and other materials designed to

set forth the obligations of recipients of Federal assistance, and the procedures for obtaining compliance. Significant Title VI amendments have been prepared and forwarded to the White House for the President's approval during 1967. In addition, the Office makes recommendations to the Attorney General, as to what policy statements, directives, and guidelines he should issue.

The Office collects quarterly and annual reports from each of the Title VI Departments and Agencies. Where those reports and other information show continued discrimination in programs assisted by a particular Department or agency, the Office conducts an in depth analysis of its civil rights compliance activities, methods of operation, staff, policy directives, and standard contractual materials. Such a study leads, in turn, to recommendations to the Attorney General who may, in turn, make recommendations to the Department or agency head involved for organization, staffing, internal allocation of functions, and other specific actions to be taken to eliminate the discrimination. In many other circumstances, recommendations of lesser importance are made directly by the Office to the Title VI coordinators of this particular agency involved.

The Office also is normally consulted by each department or agency which seeks to institute enforcement proceedings both against a particular category of recipients, and individual recipients. Where a category of recipients is involved, the steps and methods for obtaining compliance are reviewed, and a course of action agreed upon. The Office also reviews proposed individual enforcement proceedings to determine whether sufficient facts have been developed to show discrimination warranting the termination of financial assistance; and whether administrative proceedings are justified on the basis of Title VI or other provisions of law. In fiscal year 1967, HEW alone instituted such proceedings under Title VI.

In addition to the duties set forth above, the Office of the Special Assistant to the Attorney General for Title VI gives many informal opinions to the interested agencies on questions of the coverage of that Title and other civil rights obligations and the procedural requirements of the Act and the regulations. It also resolves differences in interpretation and inconsistencies between agencies, and develops methods and plans of coordination where different agencies have overlapping responsibilities in regard to particular recipients or categories of recipients. In addition, in cooperation with the Civil Service Commission, it helps to formulate civil rights training

programs for Title VI compliance officers, and for administrators and managers who have responsibilities for granting Federal assistance to programs or activities covered by Title VI.

Lastly, the Office of the Special Assistant for Title VI has responsibility for the conduct of litigation arising under that Title. Perhaps the most significant decision concerning Title VI during fiscal year 1967 was *United States* v. *Jefferson County Board of Education*, discussed above, which constituted a judicial endorsement of the policies and guidelines followed by HEW in its school enforcement program under Title VI. Another important victory was the decision in *Alabama* v. *Gardner*, which was argued in May and decided in August 1967, sustaining HEW's Title VI regulations, and the termination of federal assistance to Alabama's welfare program. After the administrative determination was sustained by the Courts, Alabama agreed to come into compliance rather than face termination of Federal assistance.

In addition to defending administrative decisions, the Office's litigation responsibility includes the initiation of selected law suits to enforce specifically non-discrimination assurance and requirements in cases where termination of assistance is unlikely to lead to compliance, or where termination is impossible or inappropriate, or where significant legal issues should be resolved quickly. Such law suits are designed to strengthen and supplement the administrative enforcement of Title VI.

LEGISLATION

The proposed " Civil Rights Act of 1966," which was drafted in part by Division attorneys, was passed by the House of Representatives in August 1966, but was not brought to a vote in the Senate.

Subsequently, Division attorneys assisted in drafting the proposed "Civil Rights Act of 1967." This bill was transmitted to the Congress by the Attorney General on February 17, 1967. The contribution of Division personnel included the collection of facts and the conduct of legal research necessary to the drafting. Attorneys of the Division also prepared responses to inquiries from Committees of the Congress and individual members concerning pending or proposed legislation.