

# **THE DEPARTMENT OF JUSTICE'S CIVIL RIGHTS DIVISION: A HISTORICAL PERSPECTIVE AS THE DIVISION NEARS 50**

*Remarks by Wan J. Kim, Assistant Attorney General for the Civil Rights Division*

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## **I. INTRODUCTION**

It is my pleasure to speak to you today about the work of the Civil Rights Division. The Supreme Court, of course, looms large for all of us here at the Department of Justice. But the Court has a particularly special meaning for the Division, as the Division was born of the Supreme Court's landmark decision in *Brown v. Board of Education*. The history of the Division is intertwined with the Court's legacy regarding the fundamental rights and civil liberties enjoyed by every person in our nation.

Founded in 1957, the Division will celebrate its 50th anniversary next year. In honor of this approaching milestone, I will focus my remarks today on the history of the Division and how it has been shaped by some of the seminal events, legislation, and court decisions that have marked the progress of our nation towards embracing civil rights protection for all individuals.

## **II. A HISTORY OF THE CIVIL RIGHTS DIVISION**

### **A. Creating A Civil Rights Division, 1957-1959**

As you undoubtedly know, the Civil Rights Act of 1957 was the first civil rights legislation enacted into law following Reconstruction. It provided the Department with its first set of tools to prosecute racial inequality and political disenfranchisement. This Act was essentially a voting rights bill authorizing the Department to bring suits seeking relief for

African-American voters.<sup>1</sup> It also required the establishment of a Civil Rights Division within the Department of Justice to enforce federal the civil rights laws.

On December 9, 1957, Attorney General William P. Rogers formally established the Civil Rights Division and charged it with seven functions. In summary, these functions are:

- a. Enforcing all federal statutes affecting civil rights;
- b. Investigating civil rights complaints received by public officials or private citizens;
- c. Conferring with individuals and groups who call upon the Department regarding civil rights matters;
- d. Coordinating within the Department all civil rights matters;
- e. Consulting with and providing assistance to other federal, state, and local agencies on civil rights matters;
- f. Researching civil rights matters and making policy and legislative recommendations; and
- g. Assisting the United States Commission on Civil Rights and similar entities with research and the formulation of recommendations.<sup>2</sup>

The confirmation of the first Assistant Attorney General to head the Division, W. Wilson White, was delayed by eight months. Prior to his nomination in 1957, White had served as the United States Attorney for the Eastern District of Pennsylvania and as the Assistant Attorney

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<sup>1</sup>Miriam R. Eisenstein, *The Civil Rights Division At Thirty-Five: A Retrospective*, Civil Rights Div. J. 4 (1992).

<sup>2</sup>Off. Att’y Gen., Order Regarding the Establishment of the Civil Rights Division, No. 155-57 (1957).

General for the Office of Legal Counsel. White's activities in the latter position became the reason for opposition in the Senate: He had developed the legal basis for President Eisenhower's dispatch of National Guard troops to Little Rock, Arkansas, to enforce the desegregation of its schools.

To help push White's nomination along, the Reverend Dr. Martin Luther King, Jr., sent a telegram to each member of the Senate Judiciary Committee in July 1958 urging immediate action. In the telegram, Dr. King considered the newly established Division an "important arm of our democracy" that promised to millions of African-Americans the protection of their basic freedoms.<sup>3</sup> White was eventually confirmed. The Division that he led for just over a year was made up of a small group of lawyers from the Criminal Division's civil rights section that, until then, had administered the handful of civil rights laws enacted during the Reconstruction period.

White was succeeded by Harold R. Tyler, who served as the Assistant Attorney General for Civil Rights from 1960-1961. This was a period during which "voting discrimination cases were vigorously resisted and required enormous commitments of legal resources."<sup>4</sup> Under Tyler, the Division acquired an additional statutory enforcement tool as the federal government grappled with undoing government-sanctioned racial discrimination in voting: In 1960, Congress passed legislation permitting federal courts to appoint voting referees to conduct voter registration following a judicial finding of voting discrimination.

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<sup>3</sup>Telegram from Rev. Dr. Martin Luther King, President, Southern Christian Leadership Conference, to Thomas C. Hennings, United States Senator (Jul. 18, 1958) (on file with Estate of Martin Luther King, Jr.).

<sup>4</sup>Open Letter from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Dept. of Justice, Regarding a Special Exhibit of the 30 Year Anniversary of the Civil Rights Division (Dec. 9, 1987).

Also in 1960, the Supreme Court in *Gomillion v. Lightfoot*<sup>5</sup> found that gerrymandering political boundaries to suppress votes by registered African-American voters violated the 15th Amendment. Because *Gomillion* extended the scope of the equal protection clause to the drawing of political boundaries by state and local governments, the Division became involved in policing the principle of one-person, one-vote in an effort to ensure access to the polls by African-American voters.

### **B. The Division and the Civil Rights Movement, 1961-1967**

In 1961, Tyler was succeeded by Burke Marshall, an anti-trust lawyer with no prior political or civil rights experience. Despite this unlikely background, Marshall set out to implement the nation's civil rights laws with vigor. He enforced court orders mandating the integration of universities in Mississippi and Alabama. He also investigated racially motivated crimes like the bombing of the Sixteenth Street Baptist Church in Birmingham, which took the lives of four girls. John Doar, who would succeed Marshall in 1965, recalls the delicate exercise Marshall practiced to enforce federal court orders; Marshall needed to be firm while avoiding any further inflammation of the ongoing political crisis. Before an en banc hearing of the old Fifth Circuit Court of Appeals, Doar remembers Marshall saying that the United States wanted to give the state of Mississippi every opportunity to cooperate but that court orders must be enforced, including by the use of physical force. The country, Marshall told the court, would be better off with the state's cooperation.<sup>6</sup>

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<sup>5</sup> 364 U.S. 339 (1960).

<sup>6</sup>John Doar, *Burke Marshall's Memorial*, 113 Yale L.J. 791 (2003).

Marshall's leadership of the Division was motivated by his belief that what was needed at the time and what he did were morally right.<sup>7</sup> Marshall dismantled segregation by relying on the federal government's power to regulate interstate commerce. His first hand experiences with the unequal status of African-American citizens in the South caused him to insist on the public accommodation provisions of the 1964 Civil Rights Act, which greatly expanded the authority of the Division.

1964, of course, saw the passage by Congress of a landmark Civil Rights Act that prohibited discrimination in public facilities, places of public accommodation, employment, and schools. The Civil Rights Division, now with John Doar as its Assistant Attorney General, used the authorities found in the 1964 Civil Rights Act to initiate suit after federal suit. Doar had served as First Assistant to Assistant Attorney General Burke Marshall for several years. During that tenure, Doar had personally escorted James Meredith onto the University of Mississippi campus in 1962,<sup>8</sup> and defused a near riot following the murder of Medgar Evers, a national field secretary of the Mississippi NAACP, in 1963.

Doar led a very active Division. Between 1965 and 1966 "thousands of public facilities and accommodations were desegregated, usually by consent but, when necessary, by litigation."<sup>9</sup> Doar's tenure also witnessed a lamentable level of violence stemming from the civil rights movement. Several high-profile criminal investigations and prosecutions were commenced as a result. Doar personally directed the Division's prosecution of the murder of three civil rights

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<sup>7</sup>*Id.*

<sup>8</sup>IvyLeagueSports.com, *NCAA Honors John Doar* (Dec. 13, 2005) available at <http://www.ivyleaguesports.com/article.asp?intID=4756>.

<sup>9</sup>Eisenstein, *supra* note 1.

workers in *United States v. Price*, which is commonly known today as the “Mississippi Burning” trial. Doar was able to secure the convictions of only 7 of the 18 defendants charged with this brutal crime. They received sentences ranging from 4 to 10 years of incarceration. This case is considered a civil rights milestone because the defendants' convictions and paltry sentences helped to raise public awareness about criminal civil rights violations.<sup>10</sup>

During Doar's tenure as Assistant Attorney General, the right to vote remained an elusive right for black Americans. In 1965, Congress passed additional voting legislation that established the authority for the appointment of federal examiners and monitors in the registration of voters and the operation of polls. The Voting Rights Act of 1965 is widely considered to be one of, if not the most, effective civil rights statutes ever passed by Congress. Doar used this new enforcement tool to strike down voter literacy tests and to block voting changes in jurisdictions Congress concluded to have the greatest potential for discrimination.

### **C. Increased Criminal Enforcement and Fair Housing, 1967-1969**

The Mississippi Burning trial exposed the Division's difficulties prosecuting criminal civil rights cases and obtaining penalties commensurate with the crime. By 1968 Congress was considering additional legislation to strengthen the Division's authority to bring criminal cases and to ensure fair housing. At that same time, Stephen Pollak succeeded John Doar as the Division's Assistant Attorney General. Pollak had been Doar's First Assistant since early 1965.<sup>11</sup> A few years ago, Pollak commented that the high points of his tenure included passage of the

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<sup>10</sup>*Id.*

<sup>11</sup>*A Conversation with Stephen J. Pollak*, Bar Report (Dec./Jan. 2000), available at [http://www.dcbbar.org/for\\_lawyers/resources/legends\\_in\\_the\\_law/pollak.cfm](http://www.dcbbar.org/for_lawyers/resources/legends_in_the_law/pollak.cfm).

Civil Rights Act of 1968, responding to the riots following the assassination of Dr. King, and implementing enforcement programs regarding employment discrimination.<sup>12</sup>

The Civil Rights Act of 1968 was broad in its reach. It aimed to combat the civil rights-related violence of the era, employment discrimination, housing discrimination, and the rights of Native Americans living on tribal reservations. With respect to civil rights-related violence, the Act expanded the list of acts considered to be criminal interference with civil rights and the penalties for such violations. As a result, federal criminal civil rights violations now included racial violence, involuntary servitude and slavery, and violations of civil rights under color of law. Severe penalties were imposed for acts which resulted in bodily injury or death.

With respect to employment, housing, education, and other matters, the Act authorized the Attorney General to initiate suits where he believed there to be a pattern or practice of discrimination on the basis of race, color, national origin, or religion. The Act also included the Fair Housing Act, which prohibited discrimination in the sale, rental, or advertisement of most private real estate transactions and in all publicly funded housing programs. Access to fair housing remains a critical component of the Division's commitment to civil rights protection today.

#### **D. The Civil Rights Division Expands, 1969-1977**

For the larger part of the 1970s, the Division was led by three Assistant Attorneys General who oversaw a period of great expansion. Not only did the Division undergo a significant reorganization expansion, but the scope of its civil rights enforcement work evolved

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<sup>12</sup>*Id.*

dramatically in the areas of employment matters, the rights of institutionalized persons, and the rights of persons with disabilities.

In 1969, President Nixon named Jerris Leonard to head the Division. Leonard, who had been a state legislator in Wisconsin for 12 years, oversaw a reorganization of the Division into sections according to enforcement function rather than by region. At the time, these sections included Criminal, Education, Housing, Employment, Public Accommodations and Voting, Title VI, Legislation, and Special Appeals.

The Title VI Section was responsible for coordinating civil rights-related policies and practices throughout the federal government and in federally-funded programs. It later evolved into today's Coordination and Review Section. The former Public Accommodations and Voting Section is now known simply as the Voting Section. Matters concerning public accommodations today arise in a variety of cases and are therefore enforced by a number of the sections. For example, the Division's Housing and Civil Enforcement section recently filed a lawsuit alleging that a Milwaukee nightclub discriminated against blacks by refusing to admit them on pretextual grounds – such as that a private party was taking place, or that the club was full to capacity. Another example is the work of the Disability Rights Section, which the public accommodations requirements of the Americans with Disability Act.

The 1970s also saw the beginning of the Division's involvement in civil rights issues concerning institutional confinement. This marked the first time the work of the Division significantly expanded to an area beyond racial discrimination.<sup>13</sup>

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<sup>13</sup>Jerris Leonard, A Short Biography of the Honorable Jerris Leonard (Feb. 1, 2006) (on file with author).



Leonard left the Division in 1971, and was succeeded by David Luke Norman, who at the time of his appointment was a Deputy Assistant Attorney General for Civil Rights. Under his supervision, in the early 1970s, the Division commenced two decades of monitoring school systems that had been previously de jure segregated for any remaining vestiges of that system. Norman also worked to establish the precedent that northern schools found to have had dual education systems would be subject to integrating those systems just like their southern counterparts.<sup>14</sup>

Norman served as Assistant Attorney General until 1973, when he was nominated to be a judge Superior Court of the District of Columbia. President Nixon then tapped J. Stanley Pottinger to lead the Division. Interestingly, Pottinger also held the position of Director of the Office for Civil Rights at what is now the Department of Health and Human Services. During Pottinger's tenure, the issue of race-based remedies to redress past discrimination, or affirmative action, entered the civil rights lexicon. Pottinger led the Division until 1977.

#### **E. Perfecting Systems of Relief When Discrimination Is Found, 1977-1989**

President Carter selected Drew S. Days, currently a Yale Law School Professor and attorney in Washington, D.C., to head the Civil Rights Division. Three significant events marked the tenure of Days:

- First, passage of the Civil Rights of Institutionalized Persons Act ("CRIPA") in 1980, which granted the Division the authority to investigate and prosecute unconstitutional conditions of confinement in state and local government institutions, such as jails, prisons, or institutions for the mentally ill;

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<sup>14</sup>Eisenstein, *supra* note 1.

- Second, the implementation of regulations protecting the civil rights of persons with disabilities with respect to federally funded programs; and
- Third, an experimental approach to desegregation enforcement that combined public housing segregation with school desegregation issues.<sup>15</sup> Days' sought to challenge city governments who intentionally planned affordable housing and school construction in a manner resulting in racial segregation. Discriminatory intent would be proven by the disproportionate impact such decisions had on minority populations. This experiment yielded a massive case against the City of Yonkers, New York, where the city was ultimately found, some years later, to have segregated its public schools and housing over a forty year period. A final resolution of the case was eventually reached twenty-one years later in January 2002.

William Bradford Reynolds, nominated by President Ronald Reagan in 1981, succeeded Days and became the longest serving Assistant Attorney General for Civil Rights in the Division's history. At this time the Division had about 374 full-time employees, 161 of which were attorneys. Reynolds had previously served the Department as an Assistant to the Solicitor General during the Nixon Administration. Between 1981 and 1987, Reynolds sought to assist the courts in perfecting systems of relief to be adopted following a finding of discrimination. For example, with respect to racial quotas in employment matters, Reynolds sought alternative but equally effective remedies such as requiring defendants to compensate victims of discrimination and to conduct outreach programs to those who had been previously excluded.<sup>16</sup> Reynolds has

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<sup>15</sup>Eisenstein, *supra* note 1.

<sup>16</sup>Reynolds, *supra* note 5.

described his tenure as an era of expanded enforcement activities and support for the orderly development of legal precedent.<sup>17</sup>

In 1987, following a series of immigration reforms, Congress authorized the Division to protect immigrants and other workers from employment discrimination based upon citizenship or immigration status, or national origin. This responsibility rests with the Division's Office of Special Counsel for Immigration Related Unfair Employment Practices, which may bring complaints before an administrative law judge who may award the injured party civil remedies or injunctive relief.

In 1988, Reynolds returned to private practice. The nomination of his successor, William C. Lucas, a law enforcement official from Detroit who had worked for the Division as a young lawyer in the early 1960s, was met with stiff resistance. Lucas served as the acting Assistant Attorney General until his nomination was withdrawn in early 1990 when he became the Director of the Department's Office of Liaison Services, now known as the Office of Intergovernmental and Public Liaison.<sup>18</sup>

#### **F. New Horizons for the Civil Rights Division, 1990-2001**

John R. Dunne, President George H. W. Bush's nominee for the post of Assistant Attorney General for Civil Rights, had served as a New York state legislator for a quarter century and, in that capacity, had bravely quieted the 1971 Attica, New York prison uprising

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<sup>17</sup>*Id.*

<sup>18</sup>Julie Johnson, *Lucas Named to Justice Job; Search on to Fill Rights Post*, N.Y. Times, Aug. 12, 1989, at 1.

that took the lives of more than 35 persons.<sup>19</sup> His tenure witnessed the Division's further expansion towards such civil rights issues as disability rights. The Americans with Disabilities Act of 1990 reduced barriers of access for persons with disabilities, and its proscription of discrimination based on an individual's disability expanded employment, educational, and housing opportunities for millions of Americans. Voting cases during this period were also expanded to include issues of apportionment, method of election, and the rights of language minorities in addition to the right to vote.

In 1994, President Clinton appointed Deval Patrick, an attorney in private practice and a senior official with the NAACP Legal Defense Fund, to succeed Dunne. Patrick confronted a rash of church burnings in the South. Between January 1995 and November 1997, more than 500 house of worship arsons were reported to the National Church Arson Task Force that was co-chaired by the Assistant Attorney General for Civil Rights and the Assistant Secretary of the Treasury for Enforcement. Hundreds were arrested in connection with these arsons.

Patrick was succeeded by Bill Lann Lee, who served from 1997 to 2001. Like Patrick, Lee was previously with the NAACP Legal Defense Fund. During the 1990s, the Division began opening a dialogue to address the issue of racial profiling, which occurs when law enforcement blindly singles out a particular racial group for a certain crime. Racial profiling undermines the confidence of our citizens in the fairness of our system of justice. In 2001, President Bush took a similarly tough stance against racial profiling, declaring before a joint

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<sup>19</sup>*Confirmation of John R. Dunne to be Assistant Attorney General for Civil Rights, U.S. Department of Justice: Hearing Before the Senate Comm. on the Judiciary, 101st. Cong. (1990) (statement of Sen. Daniel Patrick Moynihan).*

session of Congress, “It’s wrong, and we will end it in America.”<sup>20</sup> Subsequently, in 2003, the Department issued the first-ever guidelines prohibiting the use of racial profiling by federal law enforcement officials engaged in traditional law enforcement activities. Under these guidelines, race and ethnicity may only be considered in very narrow circumstances, such as in exceptional instances where national security is concerned or where there is trustworthy information, relevant to the locality or time frame of a specific investigation, that implicates a person by a particular ethnicity or race.<sup>21</sup>

### **III. THE CIVIL RIGHTS DIVISION TODAY**

#### **A. Renewing Aggressive Law Enforcement, 2001-Present**

The Civil Rights Division under President George W. Bush has been led by three Assistant Attorneys General. In 2001, President Bush nominated Ralph F. Boyd, Jr., a private practitioner from Boston, Massachusetts, to be Assistant Attorney General for Civil Rights. Boyd was succeeded by R. Alexander Acosta, a former member of the Federal Labor Relations Board, in 2003. I had the honor of succeeding Assistant Attorney General Acosta in the fall of 2005.

By the end of 2005, the Division had grown to a total of 654 employees, 337 of which are attorneys. My predecessors in this Administration and I have promoted initiatives regarding human trafficking, voting rights, religious liberties, language access, and disability rights. We

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<sup>20</sup>Press Release, U.S. Dept. of Justice, Fact Sheet: Racial Profiling (June 17, 2003), *available at* [http://www.usdoj.gov/opa/pr/2003/June/racial\\_profiling\\_fact\\_sheet.pdf](http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf).

<sup>21</sup>*Id.*

have simultaneously achieved a significant level of accomplishment in enforcing all of our nation's civil rights laws. Here are a but few examples of our accomplishments:

- We have brought more lawsuits to enforce Section 203 of the Voting Rights Act than during the entire history of the Act;
- We have launched the most extensive election monitoring efforts in history;
- We have filed significant fair lending cases against several major financial institutions;
- We have filed the first case ever alleging discrimination in commercial lending;
- We have brought successful lawsuits against several movie theaters under the Americans with Disabilities Act;
- We have filed the first class action lawsuit ever against American Airlines under the Uniformed Servicemembers Employment and Reemployment Rights Act to protect the rights of those who serve in our military;
- We have vigorously enforced the rights of institutionalized adults and juveniles, favorably resolved a record number of these matters in a recent year, thereby ensuring the constitutional and statutory rights of thousands of persons. And in matters involving children committed to juvenile justice facilities, we have increased the number of settlement agreements, doubled the number of investigations, and tripled the number of findings letters issued.
- We expect to bring more cases challenging a pattern or practice of employment discrimination this year than during the last three years of the previous Administration combined;

- We filed a major case alleging discrimination in public accommodations against Cracker Barrel Old Country Stores;
- We filed the first lawsuit since 1990 alleging racial discrimination in education under Title IV of the Civil Rights Act;
- We have reached settlement agreements with more than 100 state and local governments that have created a better life for more than one million Americans with a disability; and
- We have obtained the highest monetary award by a jury ever obtained by the Justice Department in a lawsuit brought under the Fair Housing Act.

## **B. Going Forward**

We will continue to do more. Going forward, the Division will ensure that all Americans have an unfettered chance at the American dream by having access to the housing of their choosing. The Attorney General recently announced a renewed commitment to fair housing in connection with his Operation Home Sweet Home initiative. This initiative will focus and expand the Division's Fair Housing Act testing program. The Division will investigate suspected offenders with testing visits designed to expose discriminatory practices. Over the next two years the Division intends to fulfill the Attorney General's commitment to bring the number of these targeted tests to an all-time high, thereby enforcing the rights of all Americans to obtain housing free from discrimination.

Going forward, the Division will continue to aggressively enforce the voting laws, such as the Help America Vote Act of 2002. HAVA, as it is known, was intended to preserve the integrity of federal elections by ensuring access to the polls by all voters, including the disabled.

The Division recently filed the first HAVA-enforcement lawsuit against the state of New York. In that lawsuit, the Division alleges that New York failed to adopt a voting system that is fully accessible by disabled voters and is capable of generating a permanent paper record that can be manually audited. We also contend that New York failed to create a statewide computerized voter registration database as the statute requires. Although New York has the dubious distinction of having been sued in the first HAVA lawsuit by the Department, it is not alone in its failure to comply with HAVA. In fact, no state is currently in full compliance with this congressional mandate, so you can expect to see additional HAVA enforcement actions in the near future.

Going forward, the Division will continue our impressive record to prosecute human trafficking. Human trafficking is nothing short of modern-day slavery. Considering that many trafficking victims are women and minorities, the Division's commitment to protecting society's most vulnerable members has never been stronger. In the last five years, the Department has increased the number of human trafficking prosecutions by more than 300% in comparison to the number of cases filed between 1996 and 2000. Attorney General Gonzales recently released a report documenting the Department's activities to combat human trafficking between fiscal years 2001 and 2005. I encourage you to read this report, which sets forth our accomplishment but also recognizes that we have much left to do to fulfill President Bush's directive that we eliminate this atrocious crime.

#### **IV. CONCLUSION**



Since its creation during the Eisenhower Administration, the Civil Rights Division has been an integral part of American history. It has carved out a path to ensure that each and every person is protected from discrimination and guaranteed the right to participate in elections. It has ensured that offenders of the federal criminal civil rights statutes are held accountable for their often violent conduct. Our history has not been without periods of profound sadness and turmoil, but in the end it is worthy of immense pride.

I am privileged to serve as the Division's 16<sup>th</sup> Assistant Attorney General. Let me close a few words from our 16<sup>th</sup> President, Abraham Lincoln, with whom I share no other connection but lineal order. A father of the civil rights movement in America, President Lincoln charged the country in 1865 with words ever applicable to the work of the Civil Rights Division today: "With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds \* \* \* to do all which may achieve and cherish a just and lasting peace, among ourselves, and with all nations."

I look forward to answering any questions you may have.