



United States General Accounting Office  
Washington, D.C. 20548

General Government Division

B-281670

February 17, 2000

The Honorable Charles T. Canady  
Chairman, Subcommittee on the Constitution  
Committee on the Judiciary  
House of Representatives

Subject: Civil Rights Division: Policies and Procedures for Establishing Litigation Priorities, Tracking and Managing Casework, and Disseminating Litigation Results

Dear Mr. Chairman:

The Justice Department's Civil Rights Division (which uses the abbreviation CRT) is charged with the important mission of enforcing the nation's civil rights laws. In your CRT-oversight role, you requested that we review five issues regarding the division's management of its responsibilities. As agreed with your office, this letter reports our findings regarding three of those issues: (1) CRT's role in establishing and coordinating governmentwide civil rights policies and litigation priorities; (2) the division's guidelines, policies, and procedures for tracking and managing its caseload; and (3) the division's guidelines, policies, and procedures for disseminating the results of litigation. Subsequent reports will address the remaining two issues—CRT's implementation of the Government Performance and Results Act (GPRA),<sup>1</sup> and its selection and prioritization of cases.

## Scope and Methodology

Our work focused principally on three sections within CRT—Voting, Employment Litigation, and Housing and Civil Enforcement. These sections were selected because they were the largest among the nine litigating sections in the division. We examined available documentation on CRT's guidelines, policies, procedures, and activities in each of the three sections. However, because many of CRT's processes and procedures are undocumented, we interviewed senior level division officials to obtain information about them. These officials described processes in place as of December 1999. In addition to providing information on the three sections, division officials also provided information that could be generalized to

---

<sup>1</sup> The Government Performance and Results Act of 1993 is designed to improve congressional decisionmaking by providing information on the relative effectiveness and efficiency of federal programs and spending. That is, with regard to spending decisions, the Act aims for a closer and clearer link between the process of allocating resources and the expected results to be achieved with those resources. For a fuller discussion of this framework, see Managing for Results: The Statutory Framework for Performance-Based Management and Accountability (GAO/GGD/AIMD-98-52, Jan. 28, 1998).

the entire division. We performed our audit work in Washington, D.C., from November 1998 through December 1999 in accordance with generally accepted government auditing standards.

## Results in Brief

CRT's role in establishing civil rights policies and litigation priorities and coordinating these with other federal agencies is varied.<sup>2</sup> CRT officials told us that they have had a role under Executive Order 12250 to coordinate and review federally assisted programs to ensure consistent and effective enforcement of federal statutes prohibiting discrimination.<sup>3</sup> CRT's Coordination and Review section has had primary responsibility for this function. Division officials said that they also coordinated with federal agencies that have civil rights enforcement responsibilities to share information about cases, discuss litigation strategies, review and comment on policy issues, and help ensure legal consistency. In addition, CRT officials told us that CRT established de facto civil rights policies as the primary litigator of civil rights cases and that, in its capacity as investigator and litigator, CRT also identified policy issues.

CRT's primary tool for tracking and managing most of its caseload has been its Case Management System (CMS). In addition, sections within the division have used auxiliary systems for case management to track some of their activities because the CMS did not meet their needs. At the time of our review, CRT was implementing a new database system called the Interactive Case Management (ICM) system. The new system was designed to include functions for case management, correspondence tracking, debt collection, and staff time reporting. It was also to provide standard data fields and to document divisionwide processes, procedures, and rules. According to division officials, the ICM system will enable division managers to (1) analyze performance, (2) improve accountability, and (3) report accurate data at all levels of the organization. We observed, however, that the ICM as designed will not enable CRT to report cost-based performance measures, a requirement of GPRA.<sup>4</sup>

Litigation results are disseminated internally and externally through a variety of methods, according to the Voting, Employment, and Housing section chiefs. Some of the methods involve one-on-one communication, and others involve communication through various

---

<sup>2</sup> Federal agencies with civil rights enforcement responsibilities include the Equal Employment Opportunity Commission (EEOC), the Department of Housing and Urban Development (HUD), the Department of Education (DOE), the Department of Labor (DOL), and the Department of Health and Human Services (HHS).

<sup>3</sup> Executive Order 12250, "Leadership and Coordination of Nondiscrimination Laws," November 2, 1980. Under this order, the Civil Rights Division operates a coordination program that is to ensure consistent and effective enforcement of title VI of the Civil Rights Act of 1964, as amended; title IX of the Education Amendments of 1972, as amended; and section 504 of the Rehabilitation Act of 1973, as amended. These coordination activities cover federally assisted, and with respect to section 504 federally conducted, programs, and similarly worded provisions of federal statutes that prohibit discrimination on the basis of race, color, national origin, sex, disability, or religion.

<sup>4</sup> GPRA requires agencies' annual performance plans to directly link performance goals and the program activities specified in their budget requests.

public media, the Internet, and newsletters. In addition, several specialized professional legal publications track civil rights law and report on CRT's cases and policies.

## CRT's Role in Setting the Federal Government's Civil Rights Policies and Litigation Priorities

According to division officials, CRT's role in establishing and coordinating governmentwide policies includes both more structured and less structured activities. In 1980, the division's Coordination and Review section was given the responsibility of providing leadership and coordination under Executive Order 12250. The order's goal was to strengthen the enforcement of titles VI of the Civil Rights Act of 1964 and IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973,<sup>5</sup> as well as similar provisions of program statutes that prohibit discrimination on the basis of race, color, national origin, sex, disability, or religion in programs that receive federal financial assistance. The Coordination and Review section has initiated efforts to improve and ensure governmentwide enforcement of these statutes by providing training and participating in the development of legal opinions and policy, among other things. Examples of the section's role in policy development during fiscal years 1995 and 1996 included

- providing assistance to the Environmental Protection Agency's civil rights and legal staff in investigating a title VI environmental justice complaint;
- holding discussions with DOE, HHS, and the Department of Transportation to discuss developing a series of title VI and IX policy interpretations;
- reviewing draft policy guidance for DOE concerning the application of title IX to the sexual harassment of students; and
- reviewing proposed legislation to assess the potential impact on titles VI and IX.

CRT's less structured role in establishing and coordinating governmentwide policymaking has ranged from receiving informal phone contacts about particular civil rights issues to proposing a policy change. According to division officials, attorneys have received informal oral requests for legal guidance from Congress, the White House, other federal agency officials, various interest groups, and private citizens. CRT has also worked with these entities and persons in a more formal or structured way. For example, the division's Criminal section identified limitations in the existing federal jurisdiction for hate crime laws that prevented the federal government from working with state and local law enforcement agencies in the investigation and prosecution of certain hate crimes. The Criminal section first assisted in drafting a legislative proposal. CRT then obtained the endorsement of the Attorney General and the White House, and subsequently opened discussions with congressional staff to introduce the legislation. CRT also worked with federal banking regulatory agencies to comment on a proposal to revise regulations that would permit lenders to monitor data concerning applicants for certain business and consumer loans in a manner

---

<sup>5</sup> In 1995, responsibility for coordination of Section 504 was assigned to the newly formed Disability Rights Section.

consistent with the treatment of data collected on applicants for home purchase and refinance loans.<sup>6</sup>

In addition, CRT has contributed to civil rights policymaking by reviewing and commenting on executive orders, directives, draft legislative proposals, and draft testimonies prepared by agencies that share civil rights enforcement responsibilities. For example, division officials said that they participated in White House initiatives to review the federal affirmative action programs following the Supreme Court *Adarand* decision,<sup>7</sup> and more recently coordinated with the White House on a directive to collect data pertaining to law enforcement use of racial profiling. In addition, CRT recently coordinated with DOE on testimony that each was to give on desegregation in charter schools.

With respect to establishing and coordinating litigation priorities, CRT officials told us that they have developed the litigation strategies and priorities for most of the civil rights cases because very few federal agencies have litigating authority for civil rights cases. For example, the Voting section of CRT generally has litigated all cases related to voting law violations. In addition, this section has decided which cases should be priorities and determined the legal strategy to be pursued. According to section chiefs, CRT has coordinated litigation with other federal agencies through task forces and informal meetings. CRT has also coordinated with federal agencies for whom it performs litigation, such as DOE and HUD. However, when CRT's attorneys coordinate with task forces and agencies, they retain the authority to decide the litigation strategy. Other examples of CRT's taking a leadership role in coordination efforts include its Criminal section's coordination with (1) DOL regarding litigation strategies to enforce various laws prohibiting worker exploitation; (2) the Bureau of Alcohol, Tobacco and Firearms (ATF) in investigations of church arson cases; and (3) the Federal Bureau of Investigation and ATF on medical clinic cases targeting violence directed at health care providers.

EEOC has separate litigation authority to bring suit in district court against private employers who violate employment discrimination laws. CRT's Employment Litigation section, which litigates employment discrimination cases against state and local government entities, coordinates with EEOC to discuss litigation strategies. However, each has maintained independence in developing litigation strategies for its cases.

---

<sup>6</sup> This refers to changes in Regulation B, which implemented the Equal Credit Opportunity Act. The Federal Reserve published a proposed rule in the Federal Register on August 16, 1999, addressing this and other changes.

<sup>7</sup> In *Adarand Constructors Inc. v. Peña*, 515 U.S. 200 (1995), the Supreme Court ruled that federal affirmative action programs to benefit minorities must meet the same "strict scrutiny" standard that applies to state and local programs. To survive strict scrutiny, federal programs must serve a compelling governmental interest and be narrowly tailored to meet that interest. Previously, the Court had subjected congressionally mandated affirmative action to a lesser standard of review in light of Congress' broad authority to enforce equal protection guarantees.

## CRT's Processes for Tracking and Managing Casework

The current CMS was designed to provide a mechanism for entry, storage, tracking, and reporting of matter and case data.<sup>8</sup> However, according to CRT documentation, the CMS was considered to be unstable and unreliable. The hardware was described as outdated, and the size and complexity of the system had grown to a point where it could not handle day-to-day processing. At the time of our review, the various sections of CRT were using the CMS in different capacities as a management tool to track workflow. To address shortfalls in the CMS, each section had developed auxiliary systems, ranging from word processing programs to searchable databases, depending on its individual needs.

The Housing and Civil Enforcement section has used the CMS extensively to generate reports to track and manage its matters and cases. In addition, the section used auxiliary software to track and manage workload. For example, the section maintained a word processing software file consisting of a one-paragraph summary of pending cases filed, including case name, date, allegations, and status. The section also used the same software to maintain a chart to track cases derived from fair housing testing and a list to track HUD election cases.

The Employment Litigation section has relied on the CMS as a management tool and recordkeeping device for matters and cases. In 1995, the section also created a tracking report in the CMS that the Chief and Deputy Chiefs relied on as a management and recordkeeping tool. The tracking report was kept up-to-date and accurate for the duration of matters and cases from opening to closing. However, since 1995, some fields in the CMS may have been left incomplete because the section was not using particular data fields. In addition, the section has used auxiliary databases and supplemental software applications to track and manage workload. For example, it used a database management software to track EEOC referrals, a word processing software to track affirmative action cases, and another database management software to track compliance under consent decrees.

The Voting section's use of the CMS has been limited to those data fields that it is required to maintain for recordkeeping purposes. At the time of our review, the Voting section was not maintaining data input during the duration of a matter or case. The section did not rely on the CMS as a management tool to track the section's casework. The section was using several word processing documents to track the assignment of matters and cases, status of open cases, and tracking of matters and cases by fiscal year. The section also maintained two historical listings of cases by date and subject matter.

At the time of our review, CRT was implementing a new database system called Interactive Case Management (ICM) that was scheduled to become fully operational by July 2000 at a cost of \$800,000 for development, design, and first-year maintenance. The ICM was expected to be more flexible than the current system and to allow staff to use the system in support of their casework. It was also expected to serve as a tool for senior management in resource

---

<sup>8</sup> A matter is defined as an activity that has been assigned an identification number but has not resulted in the filing of a complaint, indictment, or information. A case is defined as an activity that has been assigned an identification number that has resulted in the filing of a complaint, indictment, or information.

allocation decisions and in responding to congressional inquiries, preparing and supporting budget justifications, and handling personnel issues. Furthermore, the ICM was expected to help CRT monitor performance indicators to meet the requirements of GPRA. Finally, the system was to be consolidated with the Justice Consolidated Office Automation Network with the expectation that it would provide more consistent reporting of case management among Justice's litigating divisions. As of December 1999, the new system was completing pilot testing in the Housing and Civil Enforcement section and was to begin pilot testing in the Employment Litigation section.

During the development phase, ICM program developers met with section staff to define user requirements and establish policies and procedures that were to be used, such as those governing the roles and responsibilities of the section staff. Roles and responsibilities included such things as data input, quality control, reporting, and supervision requirements. Many of the data fields for tracking and managing matters and cases in the ICM are the same as those in the CMS; however, the content of the data fields has been modified to provide for more consistent and standardized reporting.

The ICM includes two new divisionwide tracking features. One is a module to track and manage correspondence, and the other is a module for staff time reporting. The developers were working with the sections to define requirements and policies and procedures for these modules. As of December 1999, the correspondence tracking portion of the system had been pilot tested in 6 of the 11 sections,<sup>9</sup> and the time-reporting module had been tested in 1 section and was to continue to be defined and tested as the ICM is piloted in other sections.

The time-reporting module is intended to provide information on the hours charged by defined activities. Proposed activity codes for time charges relate to both case and noncase activities and include, for example, such activities as leave, matter development, case-related hours, court time, outreach, and travel. We mentioned to division officials that the case-related activity code—which covers all case-related hours except court time — seemed broad and might not be specific enough to capture information needed to assess performance under GPRA. For example, the system could not generate information on broad subcategories of case-related hours, such as the hours spent on settlement negotiations. According to a senior division official, to gain attorney acceptance and compliance with tracking time charges, CRT limited the number of activity codes used so that attorneys did not find it too burdensome to enter the information. Agency officials told us that the time-reporting module had not been finalized and that they would take into consideration the issues we had raised.

We also noted that the ICM system was not designed to address future GPRA requirements to report cost-based performance measures. Under GPRA, agencies are to eventually use cost accounting and other financial management systems in allocating funding to performance outputs. Division officials told us that the ICM was not linked to the financial accounting system but that they could estimate costs using information from the ICM and the financial accounting system.

---

<sup>9</sup> CRT consists of 11 sections—9 litigating sections, an administrative management section, and a technical assistance section—that would use the correspondence tracking portion of the ICM.

## Dissemination of Litigation Results

According to the three section chiefs, information on the results of litigation was disseminated internally in many ways. For example, weekly reports on cases were provided to all employees, decisions on significant cases were distributed to everyone in the section, and the results of cases were discussed at staff meetings, which were held at varying intervals within each of the sections. In addition, employees sometimes learned about litigation results through electronic mail messages and casual office conversation. We also were told that attorneys had access to case information through various data systems that catalogue case briefs and settlements. According to one section chief, attorneys used this type of information as a resource for researching cases.

Externally, CRT also had several ways to communicate litigation results. The results of litigation could be found on CRT's Internet site for some cases as well as on other law-related Internet sites. In addition, the Attorney General, Acting Assistant Attorney General, and section chiefs communicated litigation results through public speaking engagements. Furthermore, the various sections issued press releases. For example, the Housing section issued press releases for all pattern or practice cases and consent decrees. Section chiefs stated that specialized legal-reporting journals, such as the Fair Housing Reporter and the Daily Labor Reporter, also published the results of litigation.

## Agency Comments and Our Evaluation

On January 28, 2000, we obtained oral comments on the contents of this letter from the Civil Rights Division's Deputy Assistant Attorney General and the Counsel to the Assistant Attorney General. These officials agreed with the message of the letter and suggested some technical corrections, which we have incorporated, where appropriate.

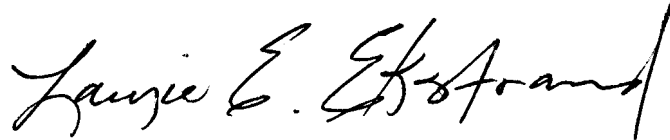
---

As arranged with the Subcommittee, we plan no further distribution of this report until 15 days after the date of this letter. We will then send copies to Representative Melvin L. Watt, Ranking Minority Member, Subcommittee on the Constitution; and Senator John Ashcroft, Chairman, and Senator Russell D. Feingold, Ranking Minority Member, Senate Subcommittee on the Constitution, Federalism and Property Rights. We will also send copies to the Honorable Janet Reno, the Attorney General; and to Mr. Bill Lann Lee, the Acting Assistant Attorney General, Civil Rights Division. We will also make copies available to others on request.

B-281670

Please contact Mr. William Jenkins or me on 512-8777 if you or your staff have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Laurie E. Ekstrand". The signature is written in a cursive, flowing style.

Laurie E. Ekstrand  
Issue Area Director  
Administration of Justice Issues



---

---

---

---

---

---

---

---