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REAUTHORIZATION OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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REAUTHORIZATION OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE

THURSDAY, MARCH 10, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, the Honorable Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order.

Thank you very much for coming this morning. We'd like to welcome everyone to this hearing. This is the Subcommittee on the Constitution's annual oversight hearing on the activities of the United States Department of Justice's Civil Rights Division for the purposes of reauthorization.

I'd like to thank our witness, the Honorable R. Alexander Acosta, Assistant Attorney General for Civil Rights at the Department of Justice, for appearing this morning. Assistant Attorney General Acosta has played a pivotal role in developing policies and initiatives to advance civil rights in the United States. We look forward to hearing from him on the Division's priorities for the upcoming year, its accomplishments since the last oversight hearing, and whether we can anticipate any changes to the Division's priorities and policies under the Justice Department's new leader, Attorney General Gonzalez. Again, thank you, Assistant Attorney General Acosta, for making yourself available to the Subcommittee here this morning.

The Civil Rights Division has played an instrumental role in protecting civil rights in this country. Established in 1957, the Division is charged with enforcing Federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. The breadth of issues falling under the Division's jurisdiction demonstrate its importance.

The Division enforces statutes such as the Civil Rights Act of 1957, 1960, 1964, and 1968, the Voting Rights Act of 1965, as amended through 1992, the Equal Credit Opportunity Act, the Americans with Disabilities Act, ADA, the National Voter Registration Act, the Uniformed and Overseas Citizens Absentee Voting Act, the Trafficking in Persons Program, Civil Rights of Institutionalized Persons Act, or CRIPA, and other civil rights provisions and Federal laws that prohibit discrimination in education, employ-

ment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs. The Division also prosecutes several criminal civil rights statutes that were enacted to preserve personal liberties and safety.

The Division has taken on additional significance in recent years. Since September 11, the Division has devoted additional resources to protecting Americans who are or are perceived to be of Arab, Muslim, Sikh, and South Asian descent. Since 2001, the Division has successfully prosecuted bias crimes and incidents of discrimination. In that same year, the Division opened its Trafficking in Persons Program.

Over the last 4 years, the Division has opened 203 investigations of human trafficking and has charged, together with the U.S. Attorney's Office, 59 defendants with 29 cases. In 2002, the Division initiated its Religious Discrimination Initiative, ensuring that religious freedoms of all Americans are enforced. And in 2004, the Division zealously monitored, enforced, and resolved voting issues, ensuring that every American's right to vote was protected.

I would like to add a personal note to the ongoing issue of voting. I, and I know everyone on the Committee, takes very seriously the issue of voting rights and election reform, but as a Congressman from Ohio and a resident of the City of Cincinnati who went to dozens of urban and suburban polling locations throughout the First District of Ohio on election day myself, I want to make clear that the election in Ohio was conducted professionally, fairly, and freely.

I know that my colleagues will have questions for Assistant Attorney General Acosta and we can expect that a wide variety of issues will be addressed this morning. So I again thank you, Mr. Acosta, for being here this morning, and before I defer to the gentleman from Virginia for the purpose of making an opening statement, I just might note that we're being called to the floor for votes, but I think we have time for an opening statement, and then when we come back, we'll get to your testimony, Mr. Acosta.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I'll be brief.

I want to welcome Mr. Acosta back to us. The work of the Civil Rights Division is one of the most important functions of Government. Without rigorous enforcement of civil rights laws, the promise of our democracy would ring hollow.

We have come far as a nation, but there is still much that needs to be done. Too many people are excluded from the mainstream of American life. Many are denied the right to vote or are subjected to schemes forcing them to wait 10 hours to cast those votes. They're denied the right to own a home, walk down the street, or to hold a job, or to enter into a public building. Every denial of a basic right is an injury to a human being, but also an injury to our nation.

My colleagues and I have many concerns about the priorities of the Division and the way its approach to protection of fundamental rights. I'm especially concerned about the extent to which large numbers of Americans were again denied the right to a free election, a right our soldiers are dying half a world away to secure.

I look forward to Mr. Acosta's testimony and I join you, Mr. Chairman, in welcoming him here today.

I yield back.

Mr. CHABOT. Thank you very much, Mr. Scott.

Mr. Franks, would you like to make an opening statement this morning?

Mr. FRANKS. No.

Mr. CHABOT. Okay. Mr. Conyers, would you like to make an opening statement?

Mr. CONYERS. I'd like to make an observation, Mr. Chairman, and I thank you so much.

Mr. CHABOT. Yes, you are recognized.

Mr. CONYERS. First of all, we join in welcoming our new leader in the voter rights area, civil rights area. There are a lot of things we've got to talk about and the Committee hearing only opens the door. Ohio is one of them. But also the guideline process utilized in section 5 in *Georgia v. Ashcroft,* the whole question of the lack of activity around employment issues in your shop.

We've been concerned about, but particularly in the civil rights community, about the flagrant disregard for civil rights enforcement evidenced by the Employment Section of the Civil Rights Division and its apparent hostility to disparate impact cases.

And so I'm looking forward to this beginning discussion with us. I know you've got your staff here, and I think we're going to be able to make some headway in some areas that I think have been sorely ignored in the Civil Rights Division of the Department of Justice.

I thank you, Mr. Chairman, for allowing me to bring this opening remark.

Mr. CHABOT. Thank you very much.

Are there no other opening statements to be made? If not, what we'll do at this time is go into recess here briefly, go over to the floor and vote, and I'd ask the Members if they could come back, although I know we have a new Member being sworn in and there could be speeches going on and things over there. I intend to come back, and if the Members would like to do that, we'd appreciate it and we could get started and have Mr. Acosta's testimony.

Mr. SCOTT. Miss the speeches? [Laughter.]

Mr. CHABOT. Miss the speeches. I'm sure that would be very painful, but—— [Laughter.]

Okay. So we're in recess here and we'll come back shortly for your testimony, Mr. Acosta. We're in recess.

[Recess.]

Mr. CHABOT. The Committee will come back to order. I want to thank all the Members for being so prompt in getting back here. We appreciate that very much so we can move on with the hearing in a timely manner.

I'm very pleased to welcome here again this morning R. Alexander Acosta. He was selected by President Bush to serve as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice on August 22, 2003. Prior to his service as Assistant Attorney General, Mr. Acosta served as a member of the National Labor Relations Board and has also served as Principal Deputy Assistant Attorney General in the Civil Rights Division.

After graduation from Harvard Law School, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit and then worked at the Washington office of the Kirkland and Ellis law firm, where he specialized in employment and labor issues. Mr. Acosta is the first Hispanic to serve as an Assistant Attorney General at the Department of Justice. He is the 2003 recipient of the Mexican American Legal Defense and Education Fund's Excellence in Government Service Award and the D.C. Hispanic Bar Association's Hugh A. Johnson, Jr., Memorial Award. He also has taught several classes on unemployment law, disability-based discrimination law, and civil rights law at the George Mason School of Law.

We welcome you here this morning again, Mr. Acosta. It's the practice of this Committee, as you know, to swear in all witnesses appearing before it, so if you would not mind please standing and raising your right hand.

Do you swear that in the testimony that you are about to give, that you will tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ACOSTA. I do.

Mr. CHABOT. Thank you very much, and you can be seated.

Without objection, all Members will have five legislative days within which to submit additional materials for the record.

We generally allow 5 minutes. However, we'll allow you such time as you might consume since you're the sole witness at this hearing this morning.

TESTIMONY OF R. ALEXANDER ACOSTA, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. ACOSTA. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member, Members of the Subcommittee, it's a pleasure to appear before you once again to represent President Bush, Attorney General Gonzales, and the men and women of the Civil Rights Division.

I have been on the job somewhat over a year now and I'm still honored and I'm humbled by the trust that the President and the Attorneys General whom I have served have placed in me by allowing me to serve in this position.

I am pleased to report that 2004 was an outstanding year for the Division. During 2004, we achieved record levels of enforcement across the board. My written statement details that work. I would like to summarize it and ask that my statement be placed in the record.

Mr. CHABOT. Without objection.

Mr. ACOSTA. Thank you, Mr. Chairman.

In brief, fiscal 2004 was a record-setting year. We achieved our highest success rate ever in courts of appeals. We opened an investigation of the 1955 murder of Emmett Till. We prosecuted 96 new criminal civil rights cases, the most ever filed in a single year. In another record, we prosecuted 59 new human trafficking defendants, a dramatic increase from the five in the year 2000. We prosecuted 46 color of law cases, just three fewer than the all-time high, achieving a 77 percent conviction rate in color of law matters and 8 percent increase in the conviction rate.

We mounted the Division's largest-ever election monitoring program, deploying 1,996 observers and monitors to watch 163 elections in 29 States. We filed and successfully resolved as many language minority ballot access cases as had been filed in the prior 8 years combined. We filed the Division's first lawsuits to enforce HAVA as well as litigating under UOCAVA and the National Voting—the NVRA. We conducted extensive outreach efforts with State election officials to ensure compliance with Federal election laws and the civil rights groups to ensure that their concerns were heard during the election.

With respect to housing discrimination, we saw an 85 percent increase in pattern or practice lawsuits. In another record in the housing discrimination area, we won the largest jury verdict ever obtained by the Division in the Fair Housing Act case. With respect to redlining, we achieved another record, bringing for the first time ever multiple redlining cases in a single year, including, in another first, the first redlining case to address small business loans.

We brought and successfully resolved a lawsuit challenging allegations of discrimination by Cracker Barrel Old Country Stores. Mr. Conyers referenced earlier employment discrimination cases. Last year, we filed more pattern or practice employment discrimination cases than any year since the mid-1990's, including disparate impact cases, which we do enforce.

We concluded the 100th Project Civic Access agreement, promoting accessibility in municipal services and facilities. We filed and resolved a landmark design and construction case under the Fair Housing Act covering 4,000 housing opportunities affecting 34 apartment complexes over six States. We settled the Division's first case ever enforcing HUD's Rehabilitation Act regulations against a public housing authority, providing more than 2,000 new housing opportunities for individuals with disabilities.

Our ada.gov website received the most hits ever, 30 million. We served 100,000 callers on our ADA information line, including 48,000 who were personally assisted by specialists. We brought the first title IV education case since 1990. We successfully resolved, in yet another record, six pattern or practice investigations of police departments, more than in any prior year. We authorized 14 new investigations under the Civil Rights of Institutionalized Persons Act. And we entered into 15 agreements under that act, the most agreements ever reached in a single year. We filed the Division's first contested lawsuit to protect the rights of juveniles in State institutions.

In short, Mr. Chairman, Members, fiscal 2004 was a record-setting year and I am grateful to the men and to the women of the Civil Rights Division whose work and whose accomplishment made these records and these cases possible.

I would like to add, and I would like to close with one added observation, if I could. These achievements, in my opinion, deserve praise and kudos, but they also serve to remind us of a larger and an unpraiseworthy truth, a truth which I think needs to be acknowledged. Allow me to explain.

I recently had the privilege of attending a preview of a History Channel documentary entitled "Voices of Civil Rights" at the Smithsonian Institution. The program was very well done. It docu-

mented the voices of typical Americans, average Americans who experienced segregation firsthand. The stories were moving. They were challenging. They were thought provoking.

I was struck in particular by one story. It was a story of a nurse, an African-American nurse who remembered the first day that her hospital was desegregated. She remembered going down to the formerly white floor to treat a white patient for the first time, a woman who had surgery that morning. As she went to treat the patient, her husband stepped in the way and said, "Don't you lay a finger on my wife." But the patient had just had surgery and needed to be treated, and so the nurse tried to treat her, at which point the husband said, now at this point yelling, "Get your blank fingers off my wife," using the "N" word. He then picked her up, carried her out of the room, and threw her down the hallway. He then unplugged his wife from the medical equipment, put her in a wheelchair, and took her out of the hospital.

Well, about a week later, the woman in this documentary recounted, she saw the man again. She was on duty at the hospital and he came up to her. She feared another confrontation, but instead, the man looked defeated and he said, "Ma'am, I shouldn't have laid hands on you when I did, because if I'd not done so—I had no right to do so, because if I had not done so, I would still have a wife and a mother to care for me and for my children."

It's difficult today to imagine such blindly self-destructive behavior, and films like this serve to remind us of history. But it is also naive to believe that in 40 years, the impulses that drove that man have disappeared entirely from our society and from our nation. While discrimination today may not take all the same exact stark forms that it once did, and while the tools to fight it must and do adapt, it nevertheless persists, and that is something that we should acknowledge.

Our efforts this past year stand testament to that fact and to the efforts of all those committed to extending opportunities to Americans of all races.

I thank you, Mr. Chairman, Ranking Member, Members of the Committee, and I look forward to your questions.

Mr. CHABOT. Thank you very much, Mr. Acosta.

[The prepared statement of Mr. Acosta follows:]

PREPARED STATEMENT OF R. ALEXANDER ACOSTA

Thank you Mr. Chairman; Ranking Member Nadler; Members of the Subcommittee:

It is an honor once again to appear before this Subcommittee, and to represent President Bush, Attorney General Gonzales and the hard working men and women of the Civil Rights Division in reporting to you on our critical work advancing the civil rights of all Americans.

I am extremely pleased to report that this past year was an outstanding year for the Division. Since last I appeared before this Committee, the Civil Rights Division has reached record levels of civil rights protection across the board. In fact, during fiscal year 2004, the Civil Rights Division:

- Achieved its highest success rate ever in the courts of appeal;
- Prosecuted 96 new criminal civil rights cases, in conjunction with the United States Attorneys' Offices, the most ever filed in a single year;
- Assembled a task force to investigate the 1955 murder of Emmett Till;

- Prosecuted, in conjunction with the U.S. Attorneys' Offices, 59 new defendants for human trafficking violations, a dramatic increase from the 5 prosecuted in 2000;
- Mounted the largest election monitoring program in the Division's history; dispatching over 1,900 federal personnel to monitor elections around the country;
- Filed and successfully resolved as many language minority ballot access cases as the Division had filed in the previous 8 years combined;
- Implemented vigorous enforcement of the Help America Vote Act;
- Increased by 85% the number of lawsuits challenging a pattern or practice of discrimination in housing;
- Won the largest jury verdict ever obtained by the Division in a Fair Housing Act case;
- Brought, for the first time ever, multiple fair lending "redlining" cases in the same year, including—in another first—claims that a bank failed to make business loans on a non-discriminatory basis;
- Brought and successfully resolved a lawsuit challenging allegations of discrimination in public accommodations by Cracker Barrel Old Country Stores;
- Filed more cases challenging a pattern or practice of employment discrimination that in any year since the mid-1990s;
- Concluded the 100th agreement under Project Civic Access, promoting accessibility in municipal services and facilities;
- Filed and resolved a landmark design and construction suit under the FHA and ADA that covers over 4,000 ground units and affects 34 apartment complexes in 6 states;
- Settled the Division's first case against a public housing authority to enforce HUD's Rehabilitation Act regulations, providing more than 2,000 new housing opportunities for individuals with disabilities;
- Received more than 30 million hits—the most ever—on its ADA homepage, which ranks among the most used federal compliance assistance websites;
- Served more than 100,000 callers on its ADA Information Hotline, including 48,000 who were personally assisted by specialists;
- Brought the first Title IV education case since 1990;
- Authorized 14 new Civil Rights of Institutionalized Persons Act investigations and entered into 15 CRIPA agreements, the most agreements reached ever in a single year in; and
- Filed the Division's first contested lawsuit to protect the rights of juveniles in state institutions since the early 1990s.

These are only highlights of our accomplishments. It is my pleasure to review these accomplishments in detail.

FEDERAL CRIMINAL LAW

During FY 2004, the Division remained ardent and vigilant in enforcing federal criminal civil rights protections. Our determined efforts produced extraordinary results. We filed 96 new criminal civil rights prosecutions in conjunction with US Attorney's Office in FY 2004—more than in any year in the Division's history. Our efforts span the full breadth of the Division's jurisdiction. In color of law matters, we filed 46 cases—just 3 fewer than the all-time high. With respect to human trafficking offenses, the Division, in conjunction with the U.S. Attorneys' Offices, filed 29 cases in FY 2004 charging 59 defendants. This effort compares dramatically with the 5 defendants charged in 3 cases during FY 2000. In addition, we prosecuted 20 instances of bias crime, including 9 instances of cross burning, and several cases challenging post-9/11 backlash bias crimes.

Color of Law Prosecutions

All of us appreciate and respect the difficult task performed daily with professionalism by law enforcement officers around the county to keep us free from harm. It is my firm conviction that the vast majority of police officers and other state agents are committed to providing the best, constitutional service possible. In light of the inherent dangers in their job, particularly in light of their new role on the front line in the war on terror, they well deserve our deep gratitude. At the same time, it is of the utmost importance that officers obey the very laws that they enforce. The public must have the trust that no one, including a law enforcement offi-

cer, is above the law. Thus, failing to hold officers to account for their conduct, and allowing that trust to be undermined, would make the job substantially more difficult.

As I noted, this past year we have had substantial success prosecuting color-of-law violations. While these cases are among the most difficult criminal prosecutions, our conviction rate in law enforcement cases increased from 69% in 2003 to 77% in fiscal year FY 2004.

I want to highlight three examples for the Committee:

In *U.S. v. Carson,* six police officers ganged-up to attack the victim of a traffic dispute with an off-duty police officer. They pulled over the victim as he was driving home from work, pulled him from his car, and beat him severely. They then wrote false police reports to cover up their assault; indeed, some of the officers fabricated evidence to trump up false criminal charges against the victim. One officer pleaded guilty; four of the remaining five officers were convicted at trial.

In *United States v. Hampton,* a police officer with the Carlisle, Arkansas Police Department used his law enforcement authority to coerce young men in his custody to perform homosexual acts. On numerous occasions, the defendant arrested individuals for minor infractions and threatened them with incarceration if they refused his sexual demands. We secured guilty pleas to two felony civil rights counts and obtained a sentence of 212 months in prison.

In *United States v. Simmons,* the defendant used his status as a police officer to sexually assault a helpless teenage victim. After pulling over the victim and her boyfriend for a traffic offense, the defendant placed the victim in his patrol car and offered to drive her home. Instead he took her to a secluded area where he repeatedly raped her. Our involvement and investigation followed an unsuccessful state prosecution. Just earlier this month, a federal jury convicted the defendant, specifically finding that he had committed aggravated sexual abuse and caused bodily injury to the victim.

While the traditional model of color-of-law enforcement relates to law enforcement officers and prison guards, it merits mention that our authority applies to anyone acting under color of law. This can include other state agents such as orderlies in nursing homes and mental facilities, others involved in the criminal justice process, and any other state employee or agent who willfully deprives an individual of his federally protected rights on account of color, religion, sex, handicap, familial status or national origin.

For example, in *United States v. Anderson,* we convicted an internationally renowned cadaver dog handler for repeatedly planting false evidence at law enforcement search scenes. Our investigation, which included local, state and federal law enforcement agencies from Florida to California and from Wisconsin to Louisiana, revealed that the defendant had planted human bones, a flesh-covered toe, and her own blood at various crime scenes she had been asked to search. The FBI laboratory was instrumental in developing inculpatory forensic evidence. The defendant pleaded guilty to federal charges of falsifying facts and obstruction of justice, and was sentenced to 21 months incarceration.

As you know, the Division has jurisdiction to investigate the conditions of confinement at state institutions including nursing homes, juvenile facilities, and mental health institutions. Our investigations of such facilities frequently turn up shocking accounts of abuse, including conduct that is rightly considered criminal. For example, in *United States v. Brewer and Bratcher,* two developmental technicians pleaded guilty to conspiring to physically abuse a profoundly mentally impaired individual who lived at the facility. The abuse culminated when the victim was whipped with an electrical cord nearly 30 times, leaving numerous welts and abrasions on his back, side and buttocks. Examples such as this, which involve the deliberate infliction of cruelty upon those least able to defend themselves, rightly shock the conscience. Although in the past the Criminal Section has considered referrals from the Special Litigation Section, I believe that we can do even better. As such, I implemented a referral procedure last year to ensure that instances of potential criminal institutional abuse are given a high priority by the Criminal Section.

Bias Motivated Crimes

Our bias-motivated crimes prosecutions concern some of the most disturbing, and to be blunt, disgusting cases. For example, in *United States v. Derifield,* we convicted two avowed white supremacists of a racially motivated attack on four teenagers, including a 14-year-old girl, who was held at knifepoint by one of the defendants. In *United States v. Garner, et al.,* six defendants were sentenced to imprisonment for 12 to 46 months for conspiring to burn a five-foot tall cross in the driveway of a home occupied by a white woman in Georgia whose daughter was dating an African-American man. And in April of last year we secured civil rights convictions

against five white supremacists in *United States v. Heldenband.* The defendants, angered that the victim was with a white woman, stabbed a black man in a Springfield, Missouri restaurant.

Equally disturbing are arsons directed against houses of worship. Last year, a Member of this Subcommittee asked us to consider this area with particular care—and we have embraced the challenge. We strengthened our relationship with the Bureau of Alcohol, Tobacco and Firearms, which investigates these crimes. We have met, and continue to meet, on several occasions with the Bureau to ensure that neither they, nor we, have reason to believe that a new trend has developed. During 2004 we prosecuted 3 church burning cases, and thus far during FY 2005 we have filed 5 such prosecutions. However, we have found no national pattern or trend that suggests an increase in the rate of this terrible offense.

Of particular importance are our successes in addressing incidents of violence and threats against Arabs, South Asians and Muslims, so called "backlash" crimes following from the September 11th terrorist attacks. Since 2001, the Department has investigated more than 630 "backlash" incidents, which have resulted in nearly 150 state and local prosecutions (many with federal assistance), and the federal prosecution of 27 defendants in 22 cases.

For example, this year, we pursued two separate bias-motivated crimes at the Islamic Center of El Paso, Texas. In *United States v. Bjarnason,* the Defendant was convicted of e-mailing a threat to burn down the mosque if American hostages held in Iraq were not released within 72 hours. Using a provision of the USA PATRIOT Act, federal agents were able to identify Bjarnason as the sender before the 72-hour period had expired. Bjarnason pleaded guilty to federal charges and was sentenced to 18 months imprisonment. In the recent case of *United States v. Nunez-Flores,* we charged the Defendant with throwing a "Molotov Cocktail" at the same Islamic Center of El Paso Mosque.

Another example is the case of *United States v. Middleman.* There, the defendant pleaded guilty to sending a threatening interstate e-mail to Dr. James Zogby, President of the Arab-American Institute. The defendant is currently awaiting sentencing. As should be obvious, we take these cases very seriously. In fact, this is the second case of a threat against Dr. Zogby. In 2002, in *United States v. Rolnik,* the defendant pleaded guilty to leaving a threatening telephone message on Dr. Zogby's voice-mail. Similarly, in *United States v. Ehrgott,* we prosecuted a defendant who pleaded guilty to sending a threatening interstate e-mail communication to the Washington, D.C. office of the Council on American-Islamic Relations.

Arab, Muslim and Sikh Americans are just that—they are Americans. Some died saving lives in the World Trade Center. Salman Hamdani, for example, was among the heros of September 11th. He was a New York City police cadet and ambulance driver. His remains were found near the North Tower of the World Trade Center with his medical bag beside him. He died doing everything he could to rescue victims of that attack. We must remember, as President Bush has said, that "those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior."

Trafficking in Persons

We have been equally successful continuing our efforts to fight human trafficking. I reported to the Committee last year on the Division's outstanding efforts on this front. This year has seen no let-up.

As of March 1, 2005, the Division had open 203 trafficking investigations, a substantial increase over the 66 open in January 2001. Of these, 130 were opened during fiscal year 2004, and an additional 52 were opened during fiscal year 2005. The Division, in conjunction with the United States Attorneys' Offices, charged a record 59 defendants in 29 cases with trafficking offenses during fiscal year 2004, as compared to 5 defendants in 3 cases in fiscal year 2000.

One of our most recent cases is *United States v. Garcia,* where a farm labor contractor and several members of her family were charged with conspiring to recruit young undocumented Mexicans from the Arizona border and transporting them to New York with false promises of good wages. They transported their victims to Albion, New York, where they were forced to work in the fields for little or no pay. On December 2, 2004, defendant Maria Garcia pleaded guilty to forced labor charges; her son, Elias Botello, pleaded guilty to conspiring to commit forced labor; and her husband and a second son entered guilty pleas to harboring aliens.

The majority of our trafficking cases, however, involve some form of sexual abuse. For example, in *United States v. Carreto,* seven defendants are currently facing charges in a sex trafficking conspiracy. The defendants allegedly organized and operated a trafficking ring that smuggled nine Mexican women into the United States

illegally and forced them into prostitution in Queens and Brooklyn, New York. One defendant has already pleaded guilty.

Last year, in *United States v. Rojas* we obtained trafficking convictions in Atlanta, Georgia against the Rojas brothers. These traffickers smuggled women from Mexico into the United States and then forced them into commercial sexual activity.

In *United States v. Arlan and Linda Kaufman,* we charged a husband and wife in the State of Kansas who, under the guise of operating a residential treatment center for mentally impaired adults, held the residents in servitude, forcing them to engage in nudity and sexually explicit acts for the defendants' entertainment and profit. Trial in that case is pending.

A judge powerfully captured the truly horrific nature of sex trafficking during a defendant's sentencing hearing in one of our cases. Shaking his head in disgust at the defendant, the judge stated: "he's the worst that I've ever seen in this court. It was worse than bad. It was almost like raping children. This gentleman took advantage . . . knew they were vulnerable, knew they couldn't cry out. Publicly humiliating them. Stripping them in public and throwing them in a canal."

The fight against human trafficking is supported at the highest levels of the Administration. This past July the Department hosted the first national conference on human trafficking. Both President Bush and the Attorney General attended and addressed the participants.

At the conference, President Bush stated, "Human trafficking is one of the worst offenses against human dignity. Our nation is determined to fight that crime abroad and at home." The President provided encouragement to the conference attendees:

> You've got a tough job, but it's a necessary job. You're hunting down the traffickers, you're serving justice by putting them behind bars, you're liberating captives, and you're helping them recover from years of abuse and trauma. The lives of tens of thousands of innocent women and children depend on your compassion, they depend upon your determination, and they depend upon your daily efforts to rescue them from misery and servitude. You are in a fight against evil, and the American people are grateful for your dedication and service.

The Division is proud of its success prosecuting human trafficking cases, but we recognize that this is only a start. Much of our focus in the area of human trafficking since the July 2004 conference has been shifting from the reactive prosecution of human traffickers to proactively attacking the problem and seeking out human trafficking where it hides. Success in doing so stands on the twin pillars of (1) successful state-federal taskforce partnerships, and (2) a victim-centered approach to enforcement.

As to the first, during 2004 the Division helped to establish 19 human trafficking task forces in major urban areas around the country including Phoenix, Philadelphia, Atlanta, Tampa, Newark, Houston, Northern Virginia, New York, Los Angeles, St. Louis, Miami, Orlando, the State of Connecticut, Albuquerque, Las Vegas, San Francisco, District of Columbia, San Antonio, and El Paso. Additional task forces will be created this year in Nassau County, New York and elsewhere. These task forces bring together Federal, state, local, and non-governmental actors to combat trafficking and provide comprehensive assistance to victims. In many instances, the investigative team in these cases is led by local law enforcement. Local law enforcement, more than we, knows where victims of these unconscionable crimes are being hidden. Local law enforcement, in turn, works closely with prosecutors from the Civil Rights Division and U.S. Attorney's Office. In addition, non-governmental organizations, which are often grantees of the Department of Health and Human Services and the Justice Department's Office for Victims of Crime, are immediately contacted in order to ensure that victims receive prompt restorative care.

Additionally, public service announcements have been issued in Spanish, Russian, Polish, Chinese, and Korean to inform victims of their rights. We are extremely grateful to our colleagues in this fight at all levels. In addition, the Division has also conducted a series of training programs for local law enforcement agencies and non-governmental organizations in Tampa, Orlando, El Paso, Houston, Connecticut, Las Vegas, Albuquerque, St. Louis and San Francisco. All the trainings were extremely well received. We are also in the process of developing a model curriculum for the victim-centered approach to identifying and rescuing trafficking victims and investigating and prosecuting their traffickers and abusers.

States are increasingly recognizing that trafficking is not just a federal problem. Texas, Washington, Minnesota, Missouri, and Florida already have state trafficking laws. The Division has worked with states to find ways to address human trafficking, including publishing for consideration a model state anti-trafficking statute.

Our prosecutors at the Department of Justice have an impressive record of convictions on trafficking charges. Convictions, however, cannot alone heal the pains and emotional scars inflicted on these victims. How does a girl that has been repeatedly forced to engage in commercial sex acts—repeatedly raped—fully recover? As we have made clear time and time and again, these victims need our help. They need our protection. True rescue means providing victims with the assistance they need to rebuild and recapture their lives. For this reason, the Justice Department requires that each of our prosecutors and investigators use a victim-centered approach.

The needs of the victim must take high priority. We work—and will continue to work—with service providers to ensure that the victims of trafficking are kept safe. Immediately after we uncover a trafficking crime, Department of Justice victim-witness coordinators help place the victims in a shelter. We work with the Bureau of Citizenship and Immigration Services to obtain Continued Presence and "T-Visas" for these victims. A "T-Visa" permits victims of severe forms of trafficking to live and work legally in the United States for three years while their cases are investigated and prosecuted.

We likewise work with the Department of Health and Human Services to help victims obtain additional services for these victims—medical care, screening for STDs, and emergency food and shelter. We help place the victims with NGOs, funded in part by the federal government. Our charge, given to us by the President, is to help these victims begin to rebuild their lives and that is exactly what we shall continue to do. In short, it is the stated policy of the Department of Justice that individuals who have been subjected to a severe form of trafficking truly are *victims* in every sense of the word.

I am proud to say that the Civil Rights Division's record of victim protection has been unflagging and robust. Since 2001, the Civil Rights Division has helped over 680 trafficking victims from 46 countries obtain refugee-type benefits under the Trafficking Victims Protection Act. In that same time period, the Division has helped over 500 victims extend their stay in the U.S. to assist law enforcement, through continued presence or a T-Visa certification.

Despite our successes, we know that we have much more work to do. The fight against human trafficking remains among the Department's chief priorities.

PROTECTING VOTING RIGHTS

Of particular importance during 2004 was the Division's responsibility to enforce certain federal voting rights statutes. Let me be absolutely clear: no civil right is more important to President Bush, to Attorney General Gonzales, or to me, than the full and fair enjoyment of the right to vote. The ballot is the essential building block of our democracy, and it must be protected.

It merits noting at the outset that ours is a Federal system of Government. Article I, Section 4 of the Constitution provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." However, recognizing the national importance of such elections, it continues, "but the Congress may at any time by Law make or alter such Regulations. . . ." Thus, except for where Congress has expressly decided otherwise, primary responsibility for the method and manner of elections, and for defining and protecting the elective franchise lies with the several states.

Congress has, in a number of distinct areas, determined that a federal scheme should overlay the states' election responsibilities. The first of these came in 1965 when Congress enacted the Voting Rights Act. This statute, which followed the startling and transforming events of "Bloody Sunday"—the beating of peaceful marchers on the Edmund Pettus bridge in Selma, Alabama—perhaps more than any other modern-day law has changed America for the better. Subsequently, Congress has enacted several additional federal voting laws, including the 1970, 1975 and 1982 amendments to the Voting Rights Act, the Uniformed and Overseas Citizen Absentee Voting Act of 1986, the National Voter Registration Act of 1993 ("Motor Voter" or "NVRA"), and the Help America Vote Act of 2002 ("HAVA"). The Civil Rights Division enforces the civil provisions of these laws, while the Public Integrity Section of the Criminal Division enforces the criminal misconduct and anti-fraud prohibitions of these laws.

Nothing so acutely focuses attention on voting rights as a national election. Such an election requires early and substantial planning on the part of the Division to ensure that it properly carries out its mandate to enforce the several statutes entrusted to it. Accordingly, starting in April 2004, I met with my voting rights leadership team to establish broad goals for the Division's effort. The Division's subse-

quent efforts, set in motion at that time, fall generally into three categories: monitoring, transparency, and legal accountability.

Election Monitoring Under the Voting Rights Act

Robust monitoring of elections is among the most effective means of ensuring that voting rights are respected. Monitoring has two primary and salutary effects. First, the presence of federal monitors serves as a deterrent to wrongdoing in a jurisdiction; second, monitors serve a reporting function, bringing to the Division's attention information that permits us to determine whether further legal action is necessary, and providing the facts necessary to take it. Accordingly, this past year the Civil Rights Division mounted the most extensive election-monitoring program in its history.

The Division generally employs two types of individual to watch an election.

First, the Voting Rights Act provides for the appointment of federal voting observers by order of a federal court pursuant to Section 3(a), or, with regard to political subdivisions covered under Section 4 of the Voting Rights Act, upon the certification by the Attorney General, pursuant to Section 6.[1] In addition, Section 8 of the Voting Rights Act provides for the appointment of federal observers within political subdivisions certified by the Attorney General or by order of a federal court pursuant to Section 3 of the Voting Rights Act.

Second, in addition to the statutorily approved monitoring, it has become common practice for the Department of Justice to send Department personnel to monitor elections in other political subdivisions where concerns about elections have been expressed.

Early in 2004 we identified election monitoring as a chief priority. At that point, we notified the Office of Personnel Management that we would request a number of monitors greatly in excess of prior election years' totals.

Given the anticipated scope of the 2004 monitor and observer program, identifying sufficient personnel to deploy was a challenge. Traditionally, the Civil Rights Division has deployed Voting Section staff along with a limited number of federal prosecutors experienced in election monitoring. This year, the determination was made not to employ federal prosecutors as election monitors actually at polling places. Rather, we recruited non-prosecutor attorneys and staff widely throughout the Division.

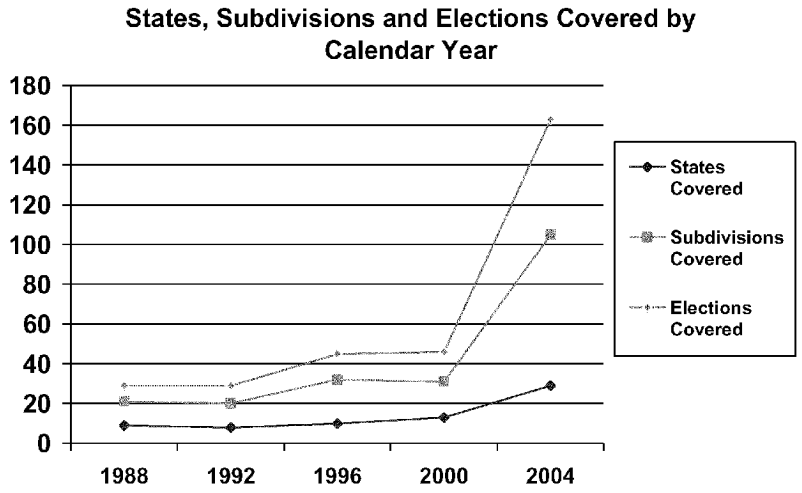
All monitors received substantial training in election-related civil rights laws, including, for the first time ever, those laws designed to protect the rights of voters with disabilities. The Division likewise worked with OPM to ensure quality training of OPM election observers.

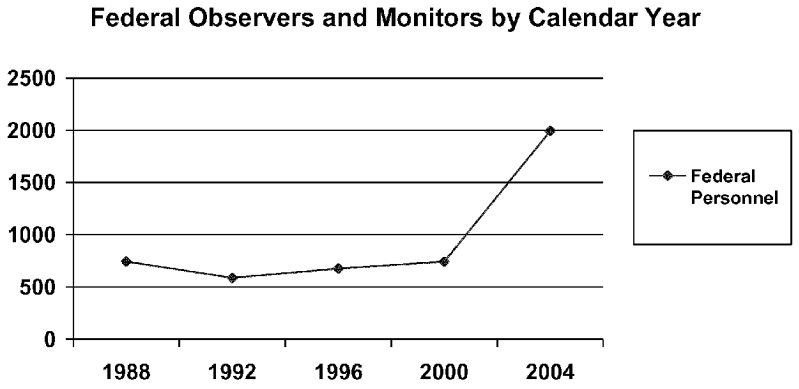
Election monitoring in 2004 began with the early primary elections and proceeded throughout the year. Prior to the general election, the Department sent 802 monitors and observers to 75 elections in 20 states, as compared with 340 monitors and observers deployed to 21 elections in 11 states pre-election during 2000.

On Election Day itself, we deployed an additional 1,073 monitors and observers to watch elections in 87 elections in 25 states, as compared with 363 monitors and observers in 20 elections in 10 states on election day in 2000.

In short, by way of comparison, during all of calendar year 2000, the Division sent 743 monitors and observers to 46 elections in 13 states. During all of calendar year 2004, including elections that were held after November 2, we deployed a total of 1,996 federal personnel to observe 163 elections in 29 states, our most extensive monitoring effort ever.

[1] A total of 148 counties and parishes in 9 states have been certified by the Attorney General pursuant to Section 6: Alabama (22 counties), Arizona (3), Georgia (29), Louisiana (12), Mississippi (50), New York (3), North Carolina (1), South Carolina (11) and Texas (17). A total of 11 political subdivisions in 11 states are currently certified by federal court order: California (3), Illinois (1), Indiana (1), Louisiana (1), Michigan (1), New Jersey (1), New Mexico (3), New York (2), Pennsylvania (1), South Dakota (1), and Washington (1).





Importance of Transparency

While impressive, this unprecedented monitoring effort by itself would have been of little use. Rather, it is just as important that the voting public and election officials know that the Division is actively monitoring elections and enforcing federal voting rights statutes.

Accordingly, we made it a point to be substantially more public in our election protection work than the Division has been in prior election years.

One area in which this was particularly significant was the manner in which election monitors are allocated. Traditionally, the Division has assigned monitors based on internal non-public criteria. This past year was different. In April, I directed the Voting Section to prepare a written explanation of the method by which we have assigned monitors to jurisdictions, identifying clearly the criteria upon which monitoring decisions would be made.

On May 4, 2004, Division leadership met with representatives of many civil rights and voting-related organizations. During that meeting, I presented in detail the Division's plans for preparing for the general election. This included a lengthy explanation of the process by which we would select jurisdictions to be monitored. More-

over, we distributed guidance on how to request monitoring for a jurisdiction, along with the information necessary to substantiate such requests. In addition to meeting with the Division, leading civil rights groups' leaders were also invited to make a presentation at the Attorney General's Ballot Access and Voting Integrity Symposium in July 2004. This Symposium was designed to train Department of Justice personnel on the work both of the Civil Rights Division and the Criminal Division.

Ultimately, with regard to election monitoring, the Voting Section identified 14 jurisdictions in nine states that were operating under federal court orders or decrees, all of which were monitored. Moreover, the Voting Section identified 58 additional jurisdictions as appropriate for monitoring, often through our vigorous affirmative outreach to minority advocates, and all were monitored. In addition, we received written requests from civil rights and election organizations that we send personnel to an additional 15 jurisdictions. Most of the referred jurisdictions satisfied the protocol and were assigned monitors or observers.

Law Enforcement & Local Accountability

As I noted, it is not sufficient only that elections be monitored; federal laws also must be enforced. Therefore, the final prong to the Division's election protection efforts was a robust litigation and enforcement effort.

Ballot Access: Voting Rights Act Section 203, the National Voter Registration Act and Uniformed & Overseas Voters.

First, during 2004, the Division enjoyed tremendous success enforcing those statutes that relate principally to access to the voter registration and balloting processes.

During 2004, we established record levels of protection for minority language voters under Section 203 of the Voting Rights Act. Section 203 provides that all "election materials and information" available in English must also be available in the applicable minority language for those who need it. This includes ballots, instructions and other materials. Often, jurisdictions even provide bilingual pollworkers to assist voters. The statute is designed to ensure that citizens not only have the opportunity to vote, but also to ensure that they cast an informed and knowing vote.

In 2004, the Civil Rights Division has filed and successfully resolved as many Section 203 cases as it had filed in the previous 8 years combined. These cases have had substantial impact. In Harris County (Houston) TX, for example, the Division entered into a Memorandum of Understanding with the county to address the language needs of citizens of Vietnamese background. Complaints were also filed in San Diego to address language needs of Latino and Filipino voters; and in Suffolk County, NY; Yakima County, WA; and Ventura County, CA to address language needs of Latino voters. Other cases involved minority language voters in Passaic County, New Jersey, and Cibola, Soccoro and Sandoval Counties, New Mexico. Together, the Division's work last year affected more minority language voters than all previous Section 203 cases combined.

Under the National Voter Registration Act, better known as "Motor Voter," the Division filed lawsuits against Pulaski County, Arkansas and against the State of New York; resolved two investigations; and opened three new NVRA investigations.

The Arkansas suit challenged the County's improper voter registration and election rolls maintenance for federal elections. The resulting consent decree required the county to implement far reaching policy and process changes, including restoring improperly removed voters; removing the names of deceased, departed, or ineligible voters; and providing electronic "polling place lookup" systems.

The New York suit involves inadequate provision of voter registration opportunities at offices located at state institutions of higher education serving disabled students. This case is still ongoing.

With so many servicemen and servicewomen oversees, the Division's work under the Uniformed and Citizen Overseas Absentee Voting Act (UOCAVA) was similarly critical in 2004. During the primary elections, the Division filed suit against the states of Georgia and Pennsylvania for failing to give overseas voters a meaningful opportunity to participate in the election by mailing absentee ballots too late. The Division obtained settlement agreements securing the rights of such voters under UOCAVA.

Election Official Accountability—The Help America Vote Act

Also, the Division was active in enforcing the Help America Vote Act of 2002.

During 2004, we filed the Division's first lawsuits to enforce HAVA, against San Benito County, CA and Westchester County, NY. Both suits were over the counties' lack of compliance with HAVA because poll officials failed to post the required voter information. San Benito County also failed to have a system for provisional voters

to find out whether their ballots were accepted and counted. Consent agreements have been reached in both cases.

The Department also participated in several lawsuits that concerned, in part, the scope of HAVA.

Among its many provisions, HAVA requires that state and local election officials permit any individual, whose name does not appear on the official registration list for a polling place or whose eligibility is otherwise questioned, to cast a provisional ballot if the individual declares that he "is a registered voter in the jurisdiction in which [he] desires to vote. . . ." Congress, however, did not define the word "jurisdiction" for purposes of HAVA. Some states defined jurisdiction to mean a voting precinct, thus requiring a voter to go to his precinct to cast a provisional ballot to be counted. This preserves these states' traditional precinct-based voting system. These states all directed election officials to help voters find the precinct in which they were supposed to vote, so they could cast their provisional ballot. Other states, however, opted to depart from the traditional precinct based system, defining jurisdiction to mean counties, or even larger geographic subdivisions. As a result, persons in these states could cast a provisional ballot that would be counted in any polling place within that larger geographic subdivision, and did not have to go to their voting precinct.

Plaintiffs challenged several states' determinations on this matter. One such suit challenged Michigan's decision to maintain its traditional precinct-based voting jurisdiction system. At the request of Attorney General of the State of Michigan, we provided views on this matter to the court. The United States does not view HAVA as prohibiting precinct-based voting. Because Congress did not define the term jurisdiction, but rather left its definition to each state, state law could require a voter to be registered in a particular polling place "jurisdiction" as a requirement of voter eligibility. This matter, it should be noted, was only one of numerous legal issues raised in those cases; we appropriately tailored the brief to address only this narrow federal issue regarding HAVA. The final court of review in each case to consider this issue agreed with the Department's view,[2] although the Sixth Circuit disagreed on the issue of who may file a lawsuit on this issue in the first place.[3]

Matters actually resolved through litigation are but the tip of the Division's voting rights efforts. Rather, the Division's Voting Section has a strong technical assistance program, which actively promotes compliance with federal voting laws, and resolves many matters well before they reach the judicial action stage.

Under Section 203 of the Voting Rights Act, for example, we have devoted substantial resources to pre-election outreach, compliance and technical assistant. After the results of the 2000 census were announced in 2002, we wrote to each jurisdiction covered by Section 203 to appraise it of its obligations. Moreover, we personally contacted by phone each of the newly covered jurisdictions. This massive outreach effort promoted substantial awareness of a previously unknown obligation.

As part of the continuing initiative to encourage voluntary compliance by covered jurisdictions, I mailed letters on August 31, 2004 to more than 400 Section 203 and 4(f)(4) covered jurisdictions reminding them again of their obligations to provide Spanish and other minority language assistance, and offering guidance on how to achieve compliance.

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[2] Although referenced in this statement, no footnote was provided in this statement.

[3] HAVA, expressly delegates to the Attorney General authority to enforce the statute in federal court. Separately, HAVA requires States to create state-level administrative processes for entertaining private HAVA complaints. The degree to which statutes that do not provide a private right of action within their own four corners may be enforced through Section 1983 has narrowed in recent years. Most recently, in *Gonzaga v. Doe* (2002), the Court held that before a statute may be enforced by a private individual through Section 1983, Congress must have (i) unambiguously manifested its intent to create an individual right, and (ii) not intended for that right to be enforced exclusively through one or more specific means other than Section 1983. Moreover, where Congress has entrusted a statute to the Department's exclusive charge, the Department will defend vigorously Congress' enforcement scheme.

The United States argued that these congressionally created, distinct, and separate enforcement schemes strongly suggest that Congress did not intend for private individuals to bring HAVA-derived actions in federal court pursuant to Section 1983. Rather, these provisions strongly suggest that Congress intended to avoid prolonged election litigation, and intended rather to promote a uniform national standard enforced in court by the Attorney General alone.

The legislative history supports this view. Indeed, Congress debated whether to include an express private right of action in HAVA, and declined to do so. Senator Dodd, a HAVA sponsor and Senate conferee, recognized that HAVA was not privately enforceable, when he said:

> While I would have preferred that we extend [a] private right of action. . . , the House simply would not entertain such an enforcement provision. Nor would they accept federal judicial review of any adverse decision by a State administrative body.

148 Cong. Rec. S10488–02, S10512 (Oct. 16, 2002).

We conducted a similarly extensive outreach and educational campaign with regard to the provisions of HAVA, particularly those that took effect on January 1, 2004. We wrote each chief state election official regarding HAVA's requirements. Then, when HAVA took effect, we widely publicized its newly effective provisions. Also during 2003 and 2004, Division personnel handled numerous inquiries, responding informally to many requests from states and organizations. Those responses are posted on our web site. Next, in early 2004, we sent informal advisories to six states raising specific concerns over their ability to comply with HAVA in time for their first elections for federal office in 2004. After the first round of federal primary elections in February and March 2004, we wrote to 3 states raising compliance concerns noted by monitors. Finally, we conducted a detailed state-by-state analysis of compliance with HAVA's statewide voter registration database requirements. This analysis has resulted in contact with several states regarding this issue and on-site visits to 3 states.

As of January 2004, HAVA's requirements for provisional voting, identification for first-time voters who registered by mail, voter information postings, and statewide voter registration databases (for those few states that did not apply for a waiver until January 2006), went into effect and were required to be implemented for the 2004 Presidential Election. As of January 2006, all state voting systems must meet the federal voting systems standards of Section 301 including permitting voters to correct voting errors and verify their votes; meeting disability and alternative language accessibility requirements; and providing for a manual audit capacity.

The Division sent warning letters or informal advisories early in 2004 to six states (Michigan, Mississippi, New York, Massachusetts, Connecticut, and Rhode Island) raising specific concerns regarding whether they would be in compliance with all of HAVA's new requirements (i.e., provisional voting, voter identification and voter information postings) by the time of their first federal elections in 2004. After the first round of federal primary elections in early 2004, the Division sent warning letters to three states (California, Mississippi and Texas) to raise specific HAVA compliance issues regarding provisional voting, voter identification and voter information postings that our observers and monitors had noted in their early elections. These letters and follow-up contacts with the states spurred them to take additional actions to bring about full HAVA compliance.

We also offered states technical assistance with respect to the requirements of the NVRA and also UOCAVA. We twice wrote each chief state election official regarding these obligations. With regard to UOCAVA we worked closely with the Department of Defense to ensure that ballots were distributed timely to troops serving in the field, and again I wrote jointly with the Pentagon to remind States of their obligations.

Finally, we wrote to the chief election official of the several Section 5 states affected by the 2004 hurricanes, namely Florida, Alabama, Mississippi, Louisiana, and Georgia. We reminded these states of their obligation to submit any emergency voting related changes necessitated by the hurricanes, such as changes in polling locations, to the Attorney General. We also offered to provide expedited review and consideration.

Election Day Activities

The Division's efforts throughout 2004 culminated in Election Day. As we approached that deadline, our efforts and their intensity increased.

Complaint Gathering and Review

Three weeks prior to Election Day, we initiated a comprehensive daily review of national media sources and election-related news services. Our attorneys combed the Internet and newspapers to identify on a daily basis all reported possible voting rights violations. The Voting Section opened inquiries into dozens of potential improprieties based on this data. In addition, we also gathered allegations of potential problems from national civil rights and voting rights groups.

The vast majority of these matters were resolved almost immediately. For example, in response to intimidation concerns, we worked out protocols with sheriffs in Duval and Broward Counties, Florida to minimize a visible police presence at or near polling places. We also met with political party/campaign leaders in both camps to discuss the appropriate circumstances for challenging voters. Challenges thereafter were few and far between. We also looked into fears of possible racial unrest in Arizona, resulting in part from the presence of Proposition 200 on the ballot. As a result of our inquiries, election officials coordinated with law enforcement to develop contingency plans to respond to any Election Day armed intimidation.

We also monitored, *inter alia,* allegations of improper felon purges, allegations of law enforcement intimidation of voters, unequal distribution of voting locations and

machines, improper efforts to disrupt or intimidate legitimate poll watching activities, improper demands for identification, improper voter challenges, and improper maintenance of voting rolls. As might be expected, many of these reports turned out to be less than reported, the result of rumor and suspicion. But, wherever allegations bore fruit we fully and diligently investigated.

Many allegations were referred to the Public Integrity Section of the Criminal Division. For instance, we noted media reports that a voter registration firm operating in Nevada and other locations was accused of destroying voter registrations. Such activity, if true, implicates the public integrity criminal laws, and a referral to the Criminal Division is appropriate, which, under the Department's longstanding practice, then takes the lead. This follows as Criminal prosecutions proceed under much tighter evidentiary and burden rules. That said, once the Criminal Division has completed its work, civil rights actions may follow.

While most of these inquiries were resolved pre-election, some raised allegations of serious civil rights violations that required additional investigation. I have directed the Voting Section to follow up fully on all election-related investigations.

Administrative Preparations

On Election Day itself, the Division stood ready. We had increased from fewer than five to fifty the number of dedicated phone lines ready to handle election complaints. We had also developed a web-based complaint system. And, we implemented new methods of record keeping making certain that complaints were recorded accurately and responded to promptly and properly.

On Election Day, the Voting Section received 1,088 calls on its expanded phone system and 134 e-mail complaints on its specially created complaint form placed on its website. Each of these contacts was entered on the new automated database created to track complaints. Many of these calls asked questions more appropriately referred to local election officials, such as where a polling place was located; and in these circumstances, referrals were made. Approximately 600 calls and e-mails were referred to attorneys, who spoke directly with the complainant. Approximately 130 were designated for further follow-up. A significant number of these complaints were subsequently resolved over the phone by Section staff and/or follow-up investigations by attorney staff on Election Day. Many of these resolutions resulted in state and local officials taking steps to ensure the complaining party was permitted to vote.

A few examples of matters resolved quickly by telephone include:

- An 18-year-old in Louisiana told that she could not vote for President—we resolved the matter with election officials;
- Poll workers in Illinois using racially derogatory language towards voters of middle-eastern descent—we resolved the matter with election officials;
- Reports of difficulties properly distributing and segregating provisional ballots—we advised election officials as to the applicable requirements of HAVA; and,
- Reports that individuals in line at the time polls closed would not be permitted to vote—we confirmed with local officials that everyone in line at that time would be permitted to vote;

Twelve investigations, opened as a result of election-day complaints, remain pending. In addition, during the pre-election period, the Section received complaints in sixteen jurisdictions where Section 203 investigations were ongoing at the time of the election. These investigations remain open. Investigations of an additional six pre-election complaints remain open, as do several matters referred to the Criminal Division's Public Integrity Section for investigation.

Election Monitoring Program Performance

On Election Day, our monitors and observers performed superlatively. As I noted, last year's monitoring effort was the Division's largest ever.

In short, during 2004, the Civil Rights Division mounted its most extensive election protection effort in its history, and accomplished much of which to be proud. Looking forward, the coming year should see a focus on more traditional voting rights matters. We recently assembled a team of attorneys to look at Section 2 matters. We have already filed one lawsuit under Section 2 this year against Noxubee County, Mississippi, and we are considering the potential for investigation in about half a dozen other jurisdictions. In response to the Supreme Court's decision in *Georgia v. Ashcroft,* we have updated our analytical framework for Section 5 analysis of redistricting plans, having vigorously litigated the *Georgia* case on remand before the case was dismissed prior to trial. And, with respect to HAVA, we are now

looking forward to assisting States in the run-up to January 1, 2006, when the balance of its requirements take effect.

By several accounts, the last twelve months have been marked with unprecedented access to the ballot. To wit, the Election Assistance Commission in its February 2005 *"Report to Congress on Election Reform Progress in 2004"* stated:

- 1.5 million people cast provisional ballots.
- Over 1 million provisional votes were counted (68%).
- 17 states used provisional ballots for the first time.
- Since 2000, at least 25% of voters have used new voting equipment, with another 30% to be using new equipment by 2006.
- At least nine states had developed and used a statewide voter registration database to help increase access to the polls.

Likewise, as stated in the CalTech/MIT Voting Technology Project's February 2005 report entitled, *"Residual Votes in the 2004 Election"*:

> "17 million more people voted in 2004 than voted in 2000, a 14% increase—approximately 1 million of those can be attributed to reforms in voting machines and administrative practices.
>
> Of the 37 states that reported total turnout in 2004, the residual vote rate was 1.1% in 2004, a reduction from the 1.9% in 2000—residual votes were those not counted because of mistakes, overvotes, or undervotes—this equals a recovery of 1 million lost votes.
>
> Florida and Georgia saw the biggest decreases in the residual vote rate from 2000 to 2004 at 2.5% and 3.1%, respectively
>
> Taking the American electoral system as a whole, the emerging evidence is that the election of 2004 was run much better than the election of 2000."

HOUSING AND CIVIL ENFORCEMENT

The Civil Rights laws help to guarantee the ability of every American to succeed. Obtaining education, employment, housing, access to public accommodations, and the financial markets are fundamental stepping-stones to personal and professional success—and they must be provided without illegal discrimination based on race, national origin, and other prohibited factors.

Indeed, as President Bush recently noted:

> At the start of this new century, we will continue to teach habits of respect to each generation. We will continue to enforce laws against racial discrimination in education and housing and public accommodations. We'll continue working to spread hope and opportunity to African Americans with no inheritance but their character—by giving them greater access to capital and education, and the chance to own and build and dream for the future. In this way, African Americans can pass on a better life and a better nation to their children and their grandchildren, and that's what we want in America.

The work of our housing and civil enforcement section squarely advances this mission.

Fair Housing

President Bush has spoken of the need to create an "Ownership Society," an America in which all citizens may find the added measure of comfort and security that comes from owning their own home. A necessary step in that process is making sure that all Americans may buy, sell, or enjoy the home of their choice without fear of illegal discrimination.

The Division is charged with ensuring non-discriminatory access to housing, public accommodations, and credit. We have worked hard to meet this weighty responsibility. During CY 2004 alone, the Housing Section filed 43 lawsuits, including 24 pattern or practice cases, an 85 percent increase over CY 2003, and an enforcement rate that is 9 percent higher than the average number of filings over the previous 7 years. Thus far, in FY 2005, we already filed 17 suits, a pace that promises to make this an outstanding year.

The facts of these cases remind us that unfortunately racism persists today.

In one case, we filed a lawsuit against the owners and managers of the Foster Apartments, in St. Bernard Parish, Louisiana, alleging discrimination against African-Americans who were seeking housing. Specifically, the defendants told black prospective applicants that they had no apartments available for rent while at the same time telling white applicants that apartments were available. And just last

month, in a case with disturbingly similar allegations, we filed a suit alleging that an apartment complex in Boaz, Alabama discriminated against African-Americans by, among other things, falsely telling them that no apartments were available

Likewise, in May 2004, the court entered a Consent Decree in the *United States v. Habersham Properties Inc., et al.,* resolving our allegations of a pattern or practice of race discrimination against African-American prospective renters at the Crescent Court apartment complex in Decatur, Georgia. This case came to our attention based on a complaint from an African-American woman who was told that no apartments were available when she went to the complex in person, but was informed of availabilities when she called back on the telephone. We confirmed the discrimination through the Division's testing program. During the testing, the rental agent consistently allowed white testers to inspect available apartments and gave them the opportunity to rent, while falsely telling black testers that there were no apartments available for inspection or for rent. The consent decree in this case requires the defendants to: adopt non-discriminatory policies and procedures; provide training for employees on the requirements of the Fair Housing Act; submit to compliance testing, and maintain records and submit reports to the Division. The defendants paid a total of $180,000 in damages: $170,000 in damages for aggrieved persons (including the African-American woman who brought the case to our attention) and a $10,000 civil penalty.

Discrimination is not limited to the basis of race. Consider, for example, the facts of a case we took to trial: *United States v. Veal.* We alleged a pattern or practice of discrimination by the defendant landlords, who systematically sought sexual favors from female tenants. One of the victims was 19 years old and living in her car with her two children when she moved into the top floor of a duplex owned by the defendants. On two separate occasions, one defendant came to her house, let himself in unannounced, and forced her to have sex with him on her bed. After these incidences, she used the medicine she was receiving to treat her sickle cell disease to try to kill herself. Another victim was homeless and living in her car, separated from her children, when she rented a home from the Veal's. After resisting several incidents where a defendant fondled her and refused to stop, the victim considered committing suicide to escape the harassment. In this case we secured a jury award of $1.1 million, the largest FHA award in the Division's history.

Fair Lending

Our lawsuits have not only defended the rights of Americans to obtain rental housing, but also to purchase houses. While a lender may legitimately consider a broad range of factors in considering whether to make a loan, race has no place in determining creditworthiness. "Redlining" is the term employed to describe a lender's refusal to lend in certain areas based on the race of the area's residents. This is a shortsighted and offensive practice based on stereotypes, and it must end.

During 2004 the Division filed and resolved two major redlining cases under the Fair Housing Act and the Equal Credit Opportunity Act ("ECOA"). Our lawsuit against Old Kent Bank alleged that the bank redlined the predominantly African-American City of Detroit by failing to provide either small business or residential lending services within city limits. Pursuant to the May 2004 settlement agreement, the bank's successor will open three new branch offices, spend $200,000 for consumer education programs, and provide $3 million in Bank-subsidized loans to the redlined areas.

Our second case in this area was against First American Bank. We alleged that the bank redlined the predominantly African American and Hispanic neighborhoods in the Chicago and Kankakee metropolitan areas by failing to provide residential, small business, or consumer lending services. This case resulted from the first redlining referral ever to the Department by the Federal Reserve Board. Pursuant to the July 2004 consent order, First American Bank will open four new branch offices, spend $700,000 on outreach and consumer education programs, and provide $5 million in Bank-subsidized loans to qualified residents of the redlined areas.

This was the first time the Division has ever filed two such cases in the same year. These lawsuits represented firsts in another area as well; they were the Division's first two suits filed under the Fair Housing Act and ECOA that challenged redlining not only for residential mortgage loans but also small business loans. As President Bush has observed repeatedly, small businesses are the engine that drives the great American economy. We will remain vigilant in ensuring that Americans have equal access to the capital markets that allow small businesses to grow and prosper.

Public Accommodations & Equal Land Use

Last year also saw the Division successfully bring a lawsuit against Cracker Barrel restaurants that alleged a pattern or practice of racial discrimination in a public accommodation, in violation of Title II of the Civil Rights Act of 1964. Following an extensive investigation, the Division uncovered evidence that Cracker Barrel employees intentionally provided poor or no service to African-American customers, segregated seating in their stores, and ignored complaints of such discriminatory activity. In May 2004, we resolved the matter through a consent decree that required the company to implement comprehensive reforms of its policies, training and investigations of discrimination complaints. The Section is now working closely with the Auditor to ensure full compliance.

The Housing and Civil Enforcement Section is charged additionally with fighting religious discrimination in a variety of contexts. This past year we were again active in defending and enforcing the Religious Land Use and Institutionalized Persons Act, or RLUIPA, which Congress passed in 2000. During 2004, we opened nine investigations, and successfully resolved three investigations where the jurisdiction opted to comply with the law without the need for formal action by the Division. Of particular note, this January the Division dismissed its complaint in *United States v. Maui Planning Commission,* our first contested RLUIPA matter, after the County agreed to issue to the religious community a previously denied construction permit. The Division also secured two significant appellate victories, cementing RLUIPA's constitutionality and reach. In *Midrash Sephardi v. Town of Surfside,* the Eleventh Circuit agreed with us first that RLUIPA constitutes a valid exercise of Congressional authority, and second that the statute was violated where religious assemblies are barred absolutely from a district where fraternal lodges such as Masonic temples are permitted to locate. In *Sts. Constantine and Helen v. New Berlin,* the Seventh Circuit on February 1, 2005, held that a Wisconsin city violated RLUIPA by imposing unreasonable procedural requirements on a Greek Orthodox congregation seeking to build a church. The Civil Rights Division briefed and argued the case as *amicus.*

EMPLOYMENT DISCRIMINATION

Combating employment discrimination ranks among the Division's most longstanding obligations. As the Committee knows, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The vast majority of employment discrimination allegations are raised against private employers, and are processed and/or prosecuted by the Equal Employment Opportunity Commission ("EEOC"). The Civil Rights Division has responsibitity for only a small, but vitally important aspect of Title VII enforcement: We have responsibility for allegations raised against those employers who should set the standard for compliance—public employers. During 2004, we achieved record levels of enforcement in that area.

Section 706—Individual Allegations of Employment Discrimination

The bulk of the Division's work involves individual claims of discrimination asserted under Section 706 of Title VII. Such allegations are first filed with and investigated by the EEOC. If the EEOC determines that a suit may lie, the matter is referred to the Division for enforcement. During FY 2004, we initiated investigations on 33 charges of individual discrimination, and filed eight lawsuits under § 706, the most filed since 2000, and just 3 short of a record-setting year.

These included several extremely significant actions:

We sued, for instance, the Pattonville-Bridgeton Fire Protection District, alleging that it subjected its only black firefighter to egregious racial harassment at work. During the time he was employed, he was the target of repeated, offensive racial slurs, which culminated in June 2002 when his car was vandalized with the word "n----r" scratched on its driver's door. Trial has been set for the summer of 2005.

In *United States v. City of Baltimore,* we alleged severe and pervasive sexual harassment of a female carpenter. Specifically, we alleged that she had been subjected to acts of indecent exposure by a harassing supervisor, who prominently displayed pornography in the workplace, simulated sexual acts while telling the female carpenter that he wanted to perform those acts on her, and encouraged sexually offensive behavior and unwanted touching by her coworkers. The Division successfully obtained a comprehensive consent order.

We similarly filed suit against the District of Columbia Fire Department, challenging a policy which allegedly required new female emergency medical technicians to undergo a pregnancy test, and which required them either to resign or undergo an abortion in the event that they "failed" that test.

Section 707—Pattern or Practice Cases

In addition to filing individual claims, the Division is also charged with independent authority to investigate on its own and to challenge patterns or practices of employment discrimination. This pattern or practice jurisdiction is the heart of the Division's practice. Such suits are extremely complex, time consuming, and resource-intensive. As a result, historically, the Division has managed only one per year. This past year, however, we prevailed in a major pattern or practice trial and we filed four additional lawsuits, the most filed in any given year since at least the mid-1990s.

In *United States v. Delaware State Police,* we filed suit against the Delaware State Police alleging that the State Police was engaged in a "pattern or practice" of discrimination against African Americans in violation of Title VII. Specifically, we alleged that a qualifications test used by the State Police had a discriminatory disparate impact against African Americans, was not "job related and consistent with business necessity" and, therefore, violated Title VII. The case was bifurcated into liability and damages proceedings. In August 2003, the court held a trial to determine liability.

At trial, the Department submitted the names of 97 African-Americans who failed the test but who nevertheless obtained law enforcement certification and employment elsewhere—including the United States Secret Service and police agencies in Delaware, Maryland, New Jersey and Pennsylvania. On March 22, 2004, the court issued a decision agreeing with our position and concluding that the State Police had set the cut score for the challenged examination "at an impermissibly high level" and, accordingly, determined that the State Police's use of the examination violated Title VII. We are currently in negotiations with the State to attempt to resolve liability issues without having to resort to further contested litigation.

In *United States v. Erie (Pa) Police Department,* we have alleged that the police department was engaged in a pattern or practice of discrimination against women in violation of Section 707 of Title VII, by using a physical agility test for entry-level police officers that resulted in disparate impact on women. This suit is presently in trial.

In *United States v. Gallup, New Mexico,* we alleged that the City engaged in a pattern or practice of employment discrimination in hiring in all departments against American Indians based on race. After negotiations, we reached a settlement and the Court entered a consent decree. The City has agreed to: (1) train employees engaged in hiring and recruitment; (2) implement policy changes; (3) pay up to $300,000 in monetary relief; and (4) accept 27 priority hires in various City departments with remedial seniority.

In *United States v. Los Angeles County Metropolitan Transportation Authority,* we alleged that the MTA has engaged in a pattern or practice of religious discrimination by failing to reasonably accommodate employees and applicants who are unable to comply with MTA's requirement that they be available to work weekends, on any shift, at any location. The lawsuit, also filed under § 706 of Title VII, alleges that the MTA failed to accommodate a former MTA employee because of his Jewish faith by failing to reasonably accommodate his religious practice of observing the Sabbath and subsequently discharging him from employment.

Finally, we took steps to protect Sikhs and Muslims in *United States v. New York Metropolitan Transit Authority.* We alleged that the New York MTA has engaged in a pattern or practice of discrimination in employment on the basis of religion in violation of Title VII by: (1) selectively enforcing the MTA's uniform policies regarding head coverings toward Muslim and Sikh bus and train operators; and, (2) failing or refusing to reasonably accommodate the religious beliefs and practices of Muslim and Sikh bus and train operators.

Uniformed Service-members Employment Rights and Restoration Act

In addition to its traditional obligations under Title VII, the Division recently took responsibility for enforcing the Uniformed Service-members Employment Rights and Restoration Act ("USERRA"). USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

USERRA matters are referred to the Civil Rights Division by the Department of Labor or by the individual who alleges the discrimination. In each matter referred to the Division, we can either pursue the case on behalf of the alleged victim or issue a "right to sue" letter much like the EEOC does in employment cases. Since October of 2004, the Division has received approximately 60 referrals. So far, we have initiated 16 investigations and authorized one lawsuit.

Needless to say, in light of the elevated number of reservists and National Guard members leaving civilian life to answer their country's call, it is imperative that we be ready to meet this challenge. This afternoon, I will be attending at training session for Division attorneys being held at the Justice Department to better acquaint our attorneys with the statute.

Discrimination against Immigrants

In many areas of the country and in many occupations, new and recent immigrants make up a significant portion of the labor force. These individuals often face discrimination because they look or sound "foreign." When work-authorized immigrants, naturalized U.S. citizens, or native-born U.S. citizens encounter workplace discrimination linked to their "foreign" appearance, our Office of Special Counsel for Immigration-Related Unfair Employment Practices (known as "OSC") steps in. OSC enforces the anti-discrimination provision of the Immigration Reform and Control Act of 1986 ("IRCA").

OSC protects lawful workers from discrimination linked to their citizenship status or national origin. Such discrimination often arises in the review process mandated by IRCA, which requires employers to verify the employment eligibility of each new hire. When employers ask individuals who are perceived as "foreign" for more documents than are required for this process, or reject valid documents, they may be engaging in document abuse. While employers may restrict the citizenship status of new hires if permitted under law, regulation or government contract, OSC also addresses cases where workers are wrongfully denied employment because of their citizenship status.

For example, in *Taye v. Crystal Care Center,* we reached a pre-suit settlement agreement resolving a complaint brought to our attention by a work authorized refugee from Liberia who was legally authorized to work. It turned out that his employer's eligibility verification procedures were discriminatory because the company failed to accept unrestricted Social Security cards and driver's licenses from non-citizens for employment eligibility verification purposes, but accepted such documents from citizens. Since the beginning of 2004, we have resolved more than 250 charges alleging immigration-related unfair employment practices.

OSC also continues its successful program of telephone interventions, allowing employers and workers to contact OSC immediately as questions about discrimination arise. Since early 2004, we have resolved over 260 employer and worker requests for immediate assistance through our telephone intervention program. We also maintain national toll-free telephone lines, for both workers and employers, fielding over 19,000 calls since the beginning of fiscal year 2004. We also distributed approximately 206,000 individual pieces of educational materials in FY 2004, about 30 percent of which were in Spanish.

In addition to resolving complaints, we have been reaching out actively to employers and community organizations so that the requirements of the law are clearly explained. We operate a grant program, through which the Civil Rights Division and its grantees have conducted 822 outreach presentations in fiscal years 2004 and 2005. Just last month we announced the availability of funds and explained the application process for our next round of grants.

DISABILITY RIGHTS AND THE NEW FREEDOM INITIATIVE

I had the privilege this past August of hosting a ceremony at the Department of Justice to commemorate the 14th anniversary of the signing of the ADA. The Division marked the event with the signing of the 100th settlement agreement reached under Project Civic Access. As you know, through Project Civic Access the Division works with municipalities to bring all of their public spaces, facilities, and services into compliance with federal law. These agreements quite literally open civic life up to participation by individuals with all sorts of disabilities. The gathering featured the remarks of several local officials as well as individuals with disabilities from around the nation who have been helped by Project Civic Access.

Nowhere was the beneficial effect of this program more evident than in the comments of Ross Palmer, a 9 year old from Santa Fe, New Mexico, who suffers from cerebral palsy. Asked what the changes made under the Project meant to him, he said quite simply:

> I want to say that the Americans with Disabilities Act allowed me to get places, gave me more to do. I will be able to go places and get around the neighborhood a lot easier and safer. Thanks.

That is the simple truth of our work in the disability area. Without simple modifications such as curb cuts, many Americans with disabilities are quite literally prisoners in their own homes. The New Freedom Initiative changes that. Furthering

this goal, during 2004 we successfully concluded 39 Project Civic Access Agreements, the most of any year since the Project began.

Disability Rights Litigation

The Division has continued to pursue aggressively complaints of disability discrimination. During FY 2004, the Disability Rights Section resolved 353 such allegations through a combination of formal and informal means, including contested litigation, settlement agreements, and mediation. These have resolved complaints involving such facets of everyday life as car rental agencies, grocery and convenience stores, motels, and child care centers.

Separately, the Housing and Civil Enforcement Section handled approximately a dozen cases to enforce the FHA's accessibility requirements, including eight new cases. In addition, at the end of the year, the Section was conducting pre-suit negotiations in four cases. We entered into nine consent decrees in 2004 involving FHA's accessibility requirements. Courts also entered six of these consent decrees during 2004 and the three other consent decrees were awaiting Court approval at the end of the fiscal year.

Of particular interest, the Division resolved two of the largest design and construction cases ever filed.

In *United States v. Deer Run Management Co., Inc.,* we filed and resolved a design and construction suit under the FHA and the new construction requirements of the Americans with Disabilities Act. The consent decree, entered November 24, 2004, covers over 4,000 ground units and affects 34 apartment complexes in 6 states. The agreement also provides for a $1.2 million fund to compensate individuals who were injured by the inaccessible housing, and for a $30,000 civil penalty to the United States.

Separately, we also filed and resolved a suit against the Housing Authority of Baltimore City. This was the Division's first case ever brought against a public housing authority to enforce HUD's Rehabilitation Act regulations. If approved by the court, it would require extensive program and policy changes, the provision of more than 800 heightened-accessible units, 2,000 new housing opportunities for individuals with disabilities, and $1,039,000 in damages. This suit is particularly significant in light of the Third Circuit Court of Appeals' decision in *Three Rivers Independent Living Center v. Housing Authority of the City of Pittsburgh,* which the Court concludes that private plaintiffs may not sue to enforce HUD's FHA guidelines.

Of major significance, this past year the Department's position prevailed before the Supreme Court in *Tennessee v. Lane.* The Supreme Court ruled that private individuals may maintain a suit for money damages against the States in cases brought to enforce access to courts under Title II of the ADA. Since that decision, the Department has defended the constitutionality of Title II in 12 lawsuits in areas such as education, public transportation, licensing, prisons, and the provision of community-based services.

Voluntary Compliance & Technical Assistance Programs

We have continued to devote substantial resources to promoting voluntary compliance with the ADA. Our success in doing so is reflected in the significantly high number of matters resolved. The Division continues to operate an extremely promising mediation program, which during 2004 successfully resolved 74 percent of the matters referred to it—this process brings more relief to more individuals faster and with less rancor than traditional litigation.

We also continue to work hard to provide compliance and technical assistance to business owners and individuals with disabilities alike. During 2004, our compliance assistance website, www.ada.gov, registered nearly 30 million hits, the most ever in a single year, ranking it among the most used Department websites. Our ADA Information Hotline provided service to more than 100,000 callers, including 48,000 who were personally assisted by specialists.

We hosted, during 2004, four ADA Business Connection meetings in Houston, Seattle, Atlanta and Washington, D.C. The ADA Business Connection was launched in January 2002 to help implement the President's New Freedom Initiative. These meetings bring together leaders of national business and disability organizations to discuss how accessibility can make business sense. The more than 50 million Americans with disabilities have $175 billion to purchase the services and products offered by accessible business. This represents more purchasing power than the sought after teenage market. Accessibility and business profit can go hand-in-hand.

The Division also published Guidance to assist with compliance. Of these, two merit particular mention. First, early in 2004, as part of our preparation for the primary and general elections, we published a 33-page *ADA Checklist for Polling Places,* which walks local officials through the process of improving accessibility at

polling places. (And, as I mentioned earlier, this year our election monitors were trained in accessibility laws as well as more traditional voting rights protections).

A second document that merits mention was a guide to making emergency services accessible, *An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People.* When Florida was struck repeatedly by hurricanes last fall, we received reports of individuals with disabilities being turned away from emergency shelters. Fortunately, local officials and emergency response groups resolved these difficulties promptly without the need for the Division's intervention. Nevertheless, these anecdotes underscored the need for activity in this area. We published a total of 9 technical assistance documents during 2004, in addition to providing Spanish language translations of 12 such documents on the new Spanish section of the *www.ada.gov* website.

Additionally, the Division is now in the process of working to capture its success on the ADA voluntary compliance front in the Housing and Civil Enforcement Section, which enforces the disability provisions of the Fair Housing Act. We are presently developing a Fair Housing Forum to bring together the Division's legal experts with housing providers, architects, builders, and disability rights advocates. It is our hope that by fostering discussion of respective needs and concerns we can establish a dialogue between these important constituencies, and at the same time improve understanding of, and compliance with, this important civil rights statute.

ADA Rulemaking

In addition, this year we initiated the process to update the ADA Standards for Accessible Design. On September 30, 2004, we published an Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of revising the Department's regulations implementing the ADA. The Department must revise its ADA Standards for Accessible Design to adopt requirements consistent with the revised ADA Accessibility Guidelines published by the Architectural and Transportation Barriers Compliance Board (Access Board) on July 23, 2004. The revised guidelines, which would apply to the design, construction, and alteration of any private or public facility subject to the ADA, are the result of ten years of collaborative efforts between the federal government, disability groups, the design and construction industry, state and local government entities, and building code organizations.[4] The public comment period for the advanced notice is open until May 31, 2005.

EQUAL EDUCATIONAL OPPORTUNITIES

Last year, we continued our important work ensuring the availability of equal educational opportunities are available on a non-discriminatory basis.

The mainstay of the Educational Opportunities Section's work remains a substantial docket of open desegregation matters, some of which are many decades old. The majority of these cases have been inactive for years. Yet, each represents an as-of-yet unfilled mandate to root out the vestiges of *de jure* segregation to the extent practicable, and to return control of constitutionally compliant public school systems to responsible local officials. We accordingly take these cases very seriously.

To ensure that districts comply with their obligations, the Division now actively initiates case reviews to monitor issues such as student assignment, faculty assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources. This past year, we initiated the largest number of case reviews in any given year, 44. In a number of these (17), we identified a need for further relief. All told, the Division in FY 2004 obtained additional relief in 23 cases through a combination of litigation, consent decrees, and out of court settlements.

Of the Division's active desegregation matters, the most visible this past year was the new consent order secured in *United States v. Chicago Board of Education,* which addressed the school district's failure to comply with an earlier agreement. The comprehensive decree addressed a variety of subjects in the third largest school district in the country, which enrolls over 440,000 students in 600 schools. Among the areas addressed are student and faculty assignment, and remedial educational programs and funding. As a result of this agreement—and our vigorous enforcement of it—minority students were given the choice to transfer to better performing schools. One student who took advantage of this option told the Chicago Tribune the difference it made in his life. At his old school, he said, "kids walk up to you

[4] The ADA requires the Justice Department to publish regulations that include accessibility standards that are consistent with the guidelines published by the Access Board. The Access Board's revised guidelines are now effective as rulemaking guidelines for the Department of Justice and the Department of Transportation, but they have no legal effect on the public until these Departments issue final rules adopting them as enforceable ADA Standards.

and say, 'What's up? Give me your money,'" at his new school they say, "Hi, Terrance. How are you doing?" The consent decree also addresses the district's failure to appropriately fund certain majority-minority schools, and to provide appropriate services to English Language Learners.

Another notable lawsuit we brought last year involved Lafayette High School in Brooklyn, New York. We alleged that school officials were deliberately indifferent to the repeated and systematic harassment of Asian students. Several Asian students had been violently assaulted and abused by fellow students shouting anti-Asian racial slurs. Some examples of the harassment included Asian students who were subjected to daily verbal and physical harassment in the hallways, stairwells and classrooms of the schools. Other students regularly threw food, cans and even metal combination locks at Asian students in the school cafeteria. We were able to resolve the lawsuit through a consent decree, which was approved by the court. This was the Division's first ever harassment case filed under Title IV—and the first Title IV case filed since 1990.

Our work in *Hearn v. Muskogee School District* also drew national attention. There we helped Nashala Hearn, a young Muslim girl, who was denied the right to wear a religious headscarf—a "hijab"—to class. Rather than embrace the opportunity to educate children regarding other cultures and religions, school officials expressed concern that children would fear the hijab, and thus suspended Nashala until she removed it. We negotiated a consent decree that permitted Nashala to wear the hijab and modified the district's policy with respect to the dress code as it relates to possible discrimination on the basis of religion. After we prevailed, this brave young girl traveled to Washington where she testified before the Senate Judiciary Committee. "My friends can wear their crosses to school," she told the Committee. "Why can't I wear my hijab?" A good question indeed.

LIMITED ENGLISH PROFICIENCY

While I mentioned earlier the Division's efforts for those who are limited-English proficient in the areas of voting and education, language access is equally important in other areas.

As you may know, on June 16, 2002, the Department of Justice published in the *Federal Register* an LEP Guidance Document for recipients of federal financial assistance. Executive Order 13166 requires that all federal funding agencies use the Department's document as a model in drafting and publishing guidance documents for their recipients, following approval by the Department. To date, seventeen agencies have published approved documents.

The Guidance explains that while most individuals living in the United States read, write, speak and understand English, there are many individuals, however, for whom English is not their primary language. Based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. For these individuals, language assistance is essential. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964 and Title VI regulations against national origin discrimination.

This administration is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. As part of President Bush's Firstgov En Español initiative, the Civil Rights Division has established a Spanish language site. During a two week period, nearly 5 percent of visits to our website homepage were to our Spanish language homepage—a very significant percentage. As we go forward, our focus in this area has turned to training federal grant recipients so they will be able to provide language assistance for individuals who need access services.

This year, the Department held the first ever federal LEP Conference, and unveiled three major resources in conjunction with that conference. Individuals from all over the country discussed the importance of, and innovative strategies to ensure, language access. Almost 200 representatives from recipient organizations, federal government agencies, various community groups, and the fields of interpretation and translation attended. Panelists throughout the day made presentations about their innovative programs and practices, many of which were featured in the resource document issued that day. A videotape of the event is being edited so that the information can be distributed beyond the participants.

During the conference, we released an important LEP resource document entitled "Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field." This document provides lessons from the experiences of law enforcement, 911 centers, domestic violence providers, courts, and DOJ components on meaningful access. Although geared to these entities, the general section of the document contains useful tips and tools for any entity trying to provide language access. We developed the document over many months of research to gather useful practices from throughout the country. It is now available on the LEP website, www.lep.gov.

SPECIAL LITIGATION: CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

Many of the Division's statutes focus on protecting the most vulnerable in society. This is certainly the case with the Division's enforcement responsibilities under the Civil Rights of Institutionalized Persons Act ("CRIPA"). CRIPA authorizes the Attorney General to investigate patterns or practices of violations of the federally protected rights of individuals in state-owned or -operated institutions. These include nursing homes, mental health facilities, and juvenile correctional facilities. The Division's investigations and prosecutions continue to uncover manifest abuse and appalling conditions, and to successfully arrive at solutions.

FY2004 saw substantial successes protecting the rights of institutional residents. We authorized 14 new CRIPA investigations, and entered into 15 CRIPA agreements, the most agreements ever in a single year. We released 11 findings letters, and, we remained active in ongoing CRIPA matters and cases involving over 164 facilities in 34 States, as well as the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. We are continuing investigations of 56 facilities, and are monitoring the implementation of consent decrees, settlement agreements, memoranda of understanding, and court orders involving 105 facilities. Last year, these investigations included 121 tours of facilities to evaluate conditions and monitor compliance.

I want to highlight three cases for the Committee. We filed and resolved a complaint in *United States v. Louisiana* regarding the Hammond and Pinecrest Developmental Centers. The consent order entered in that case resolved an investigation into the conditions of confinement at the two facilities. That investigation revealed that staff members at one of the facilities had been arrested for abuse, including kicking a resident, dragging him to his room, placing a blanket over his head, and hitting him. At the other facility, staff members had left residents alone for sufficiently long periods of time that when the residents were eventually found they were soiled with drool, vomit, or urine. This matter has also been referred to our Criminal Section for review.

The Division also filed a complaint and a consent decree in *United States v. Breathitt County, Kentucky* (E.D. Ky.), resolving an investigation of the Nim Henson Geriatric Center. The Division's investigation suggested unconstitutional conditions including the use of inappropriate medications for an elderly population, unnecessary medical interventions such as feeding tubes, and residents with untreated bedsores. The consent decree contains remedial measures addressing these and all of the Division's other findings of unconstitutional conditions at Nim Henson.

Third, on September 15, 2004, the Division filed in federal court a comprehensive agreement with the State of Arizona to remedy egregious conditions at three Arizona juvenile justice facilities. As identified in the Division's findings letter, these conditions included three juvenile suicides by hanging at one of the schools in a single year. In one suicide, staff lacked the appropriate tool to cut the noose from a victim's neck and also did not have oxygen in the tank they brought to help resuscitate him. The Division also found that staff sexually and physically abused youth.

Additionally, last year I reported that the Division had just filed a contested lawsuit against the State of Mississippi over the conditions of confinement at several of the state's juvenile confinement facilities. Our findings letters details acts, which should not take place in juvenile facilities. We found that staff engaging in hogtying of juveniles, binding their hands together and their feet together and then binding all four extremities together. We found that staff at the facilities placed suicidal girls naked into a "dark room" with only a hole in the floor for a toilet for extended periods of time. We found that children who became ill during physical exercise were made to eat their vomit. And, we found deficiencies in mental health and medical care, juvenile justice management, and regular and special education services. This litigation, referred to us by Congressman Benny Thompson, marked the first time in many years that the Division filed a contested lawsuit seeking to remedy such unconstitutional conditions. Our suit is active, and we are working to resolve the matter.

We have now filed a second contested lawsuit in this context. In June of 2004, we filed suit against Terrell County, Georgia over conditions of confinement at its jail, after we found that the jail routinely and systemically deprived inmates of constitutional rights. We identified considerable evidence in support of these allegations, including a lack of mental health care for inmates with clear symptoms of mental illness, such as a detainee who was left unsupervised despite being on "suicide watch" and who hanged himself with his jail-issued sheet in August 2003.

As you can see, this work is among the Division's most important, and truly changes the lives of those it affects. We will continue these efforts during 2005.

SPECIAL LITIGATION: PROMOTING CONSTITUTIONAL LAW ENFORCEMENT

In addition to CRIPA, our Special Litigation Section is charged with implementing Section 14141 of the 1994 Violent Crime and Law Enforcement Act. Section 14141 authorizes the Division to investigate patterns or practices of violations of federally protected rights by law enforcement officers. Since 2001, the Division has successfully resolved 14 such matters, as compared with only 4 resolved over the prior 4 years. Our efforts continue, as the Division presently has 12 ongoing investigations, 4 of which were newly opened during 2004.

When I appeared before the Committee last year I explained the new approach we have crafted to such cases. Rather than adopting a purely litigation-driven enforcement model, our experience demonstrates that a cooperative model produces much better and faster results. Accordingly, rather than husband findings of potential violations for use in court, we work hard to keep target agencies informed of our findings and progress, so that they can begin to develop and implement effective solutions. Local police agencies are fully the Division's partner in developing constitutional norms for policing. By including them in the process, local agencies are more likely to "buy in" to the solution, making lasting change more likely.

An example of our success last year in our police misconduct civil investigation program is the execution of a settlement agreement and a consent decree with Prince George's County, Maryland and the Prince George's County Police Department requiring major reforms regarding the use of force and use of canines. These agreements resolved an investigation that had been ongoing for 5 years. While these investigations were ongoing, the Police Department paid nearly ten million dollars in police misconduct settlements, court judgments, and jury verdicts from fiscal year 2001 through 2003. I am also pleased to report that both the Fraternal Order of Police and involved community groups welcomed this amicable resolution.

We also continued to enforce existing agreements. In an effort to jump-start the Detroit Police Department's compliance efforts, we provided the city last summer detailed on-site technical assistance from our police practices experts at no cost. Subsequently, in the face of non-compliance with two consent decrees by the Detroit Police Department, we filed a pleading with the Court.

During 2004 we also continued our commitment to provide technical assistance to law enforcement agencies under investigation. We provided the Bakersfield, California Police Department with a detailed 20-page technical assistance letter providing recommendations regarding, *inter alia,* the use of force and investigation of allegations of misconduct. We also agreed to provide ongoing technical assistance regarding uses of force and use of force investigations to the police department in Portland, Maine as part of the resolution of the investigation of that department and made our police practices expert available to the department for that purpose.

The Division is carefully monitoring the Cincinnati Police Department's compliance with the Memorandum of Understanding we negotiated with the City in April 2002. This Agreement has at times followed an occasionally bumpy road. Nevertheless, we are hopeful and confident that the Cincinnati Police Department will continue to correct its prior deficiencies, and that the community will continue to develop a greater appreciation for the overwhelmingly fine men and women serving in that Department.

We are also actively engaged with other federal offices and the police communities in identifying and understanding emerging issues in policing. One such issue is the use of so-called "less-than-lethal" force, such as the taser device. It is important that such equipment be understood and used properly. It is equally important that police officers have access to a range of force options, rather than face the binary choice of fists or firearms. Accordingly, this spring we will be assisting the Office of Justice Programs in hosting a conference on less-than-lethal uses of force.

As I noted earlier, I have particular respect for the difficult task performed by Police Departments around the country each and every day. To the extent that the Division can both assist further their mission and promote Constitutional policing, we are performing a valuable task.

CONCLUSION

In closing, I hope my statement today makes clear the scope and breadth of what falls within the jurisdiction of civil rights protection. I hope too that my statement reflects the outstanding work of the men and women of the Division. These accomplishments should also, however, remind us of a larger truth.

I recently attended a special preview of a History Channel documentary entitled "Voices of Civil Rights," hosted by the Smithsonian Museum of American History. This program recorded the oral histories of those who experienced first hand the Civil Rights struggles of the 1950s and 1960s. Many of these stories were challenging. They recorded from all perspectives the anger of those days.

One story, however, particularly struck me. It was the story of an African American woman who had been a nurse in a segregated hospital—separate floors, two races, no mixing. On the day the hospital desegregated, she was sent to the formerly white floor to treat, for the first time, a white woman, who had undergone surgery that very morning.

As she approached, the patient's husband stepped forward. "Don't you lay a finger on my wife," he said. Loyal to her profession, the nurse began to tend the patient. At this, the husband reacted violently. "Get your n----r fingers off my wife," he yelled. He picked up the nurse, carried her from the room, and hurled her down the hallway. Then, he unplugged his wife from the medical equipment, placed her in a wheelchair, and took her home.

A week later, the nurse was on duty when the man returned to the hospital. She feared a continued confrontation. Rather, in a defeated voice, he said simply: "I had no right to lay my hands on you. If I had not done what I did, I would still have a wife to care for my children."

It is difficult to imagine such blindly self-destructive behavior today. It would also, however, be naive to believe that in a mere 40 years—a single generation—the impulses that drove it have disappeared entirely from our society. While racism may not take all of the same stark forms as it once did, and while the tools to fight it must adapt, it nevertheless persists.

Our efforts this past year stand testament to that fact, and to the efforts of those committed to improving America for all Americans.

Thank you, and I look forward to answering any questions that members of the Committee may have.

Mr. CHABOT. The members of the panel now will have five minutes to ask questions. I recognize myself for 5 minutes for that purpose.

The Civil Rights Division is involved in efforts to address allegations of misconduct against police departments. In some cases, it's done with consent decree. In other cases, it's a memorandum of understanding. In the case of the city that I represent, Cincinnati, there is a memorandum of understanding, as you well now.

Now, how does the Division determine whether the parties are in compliance? For example, the City of Cincinnati has been determined by the monitor to be in compliance in several areas, such as implementation of the mental health response team, foot pursuits and use of force policies, which include tazer and chemical spray, canine and beanbag shotgun, and pepper ball. Are there concrete measures from which the police department can determine whether they're still making progress, and what comments would you have in that area?

Mr. ACOSTA. Certainly, Mr. Chairman. Let me say that our approach to police cases has been very successful because we focus on fixing the problems, not fixing the blame. The hallmark of our approach is communication and cooperation where possible where cities, as is the case in Cincinnati, are looking to make progress to address issues. And in fact, I think it should be acknowledged that Cincinnati has made considerable progress in implementing the MOU's substantive changes.

The memorandum of understanding, or MOU itself, sets forth a lot of the requirements that the city has to achieve in order to be in compliance, and so the way we determine these is very much on a case-by-case basis based on the city, on the city's particular needs, on the situations of the city, on the degree to which the city is getting ahead of the curve and coming into compliance on its own.

One very important issue with respect to compliance are the provisions that we have in all our agreements and in all our consent orders requiring cities and police departments to provide us with documents, because certainly we are hopeful that jurisdictions come into compliance. We know that jurisdictions do make progress. But we have a duty and obligation to substantiate that by reviewing documents ourselves.

So I guess I would summarize by saying Cincinnati has made considerable progress and we hope that that is documented so that we can look at those documents and, in fact, judge for ourselves that we have compliance in each of the areas.

Mr. CHABOT. Thank you very much. Let me shift gears, same State, but just the overall area. A great deal of press has been generated about the alleged flaws about the voting process in my State, in Ohio, and in other areas, as well, but the principal focus really has been on Ohio. Your testimony doesn't reference Ohio or identify Ohio as a problem jurisdiction prior to or subsequent to the election. Would you explain why that is?

Mr. ACOSTA. Certainly, Mr. Chairman. I think it's important to recognize that this election, while we're certainly looking into some matters, in this election, we had a record turnout. Turnout increased by 17 million voters nationally. The turnout rate was almost 61 percent, the highest since 1968. In Ohio, for example, the turnout was the largest in the State's history. The turnout rate was 71, almost 72 percent of registered voters.

If you look at changes that have been implemented since 2000, for example, under HAVA, the EAC distributed $2.2 billion to improve the voting process. As a result, about 25 percent of voters nationally voted on new machines. According to one study, that has resulted in a million additional votes that can be attributed to those new machines. The residual vote rate, in other words, the number of uncounted votes, has fallen dramatically, from 1.9 percent in 2000 to 1.1 percent in 2004.

With respect to provisional ballots this year, one million new provision ballots were cast and counted. Seventeen States used provisional ballots for the first time.

So in sum, I would say that across the nation and in Ohio, more people voted using better voting machines and having their votes count. The point, and a point that I think should not go unnoticed, is while we're certainly looking at certain matters, we saw improvements across the board in the administration of the election throughout the nation as well as in Ohio.

Mr. CHABOT. Thank you. My time is about ready to expire. Let me just ask one final question. Do you expect that the priorities of the Civil Rights Division would change under the watch of Attorney General Gonzales from those of Attorney General Ashcroft, and if so, in what ways?

Mr. ACOSTA. Mr. Chairman, our job is to enforce the law. Attorney General Ashcroft took civil rights very seriously and I know Attorney General Gonzales does, as well.

Mr. CHABOT. Thank you. I thought you might answer in that way, but I wasn't sure, so thank you very much.

Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you. Mr. Acosta, I was a cosponsor of the bipartisan Prison Rape Elimination Act. Do you intend to fully operate with the Prison Rape Commission in the conduct of its work?

Mr. ACOSTA. Absolutely, Mr. Scott. As a matter of fact, I have already spoken with the Executive Director of the Commission and we've already talked about establishing a cooperative relationship.

Mr. SCOTT. Thank you. I'm also a cosponsor of a bipartisan draft bill to address domestic sex trafficking through a focus on demand reduction, that is, a focus on enforcement against Johns and have more treatment for prostitutes as victims, providing services and assistance. Are you familiar with that draft bill being circulated?

Mr. ACOSTA. I am not familiar with the draft bill, Mr. Scott.

Mr. SCOTT. Do you believe that some engaged in prostitution should be treated as victims eligible for services and assistance?

Mr. ACOSTA. Mr. Scott, this is a very important issue. The Civil Rights Division has prosecuted a record number of trafficking cases and the prosecution is not the only thing that is important. A victim-centered approach that we apply is critical. We have rescued, I believe as of last I checked, 683 victims from human trafficking, and they are victims and they should be treated as victims.

Some have said that if you treat victims of trafficking as victims, that you encourage additional trafficking because it is possible that some individuals may want to get the benefits, the immigration benefits or the other benefits that come from that. We feel very strongly that victims are victims. They need to be treated as victims and they have, whether it is health care or immigration concerns, we need to rescue them and to help them rebuild their lives.

Mr. SCOTT. Thank you. The Help America Vote Act provides for disabled voters one accessible voting booth per precinct where disabled voters can vote with a secret ballot. The deadline for that is about 9 months from now. What are you doing, what is your Department doing to make sure that we meet that deadline?

Mr. ACOSTA. Congressman, this is a very important issue. I'll tell you what we have already done. For the first time ever in this election, we trained our monitors in accessibility issues for voting pursuant to the ADA. We issued a document to local officials detailing accessibility requirements, which also has a helpful sort of last minute fix-it sheet of actions that they can take to ensure accessibility in polling places.

With respect to the 2006 HAVA deadlines, we are in the process of surveying the States as we did going up to 2004 to ensure that all the States comply fully with the accessibility requirements of HAVA in 2006.

Mr. SCOTT. And that is not just getting to the polling place, into the polling place, it is also being able to cast a ballot in secret.

Mr. ACOSTA. That is getting to the polling place and it is being able to cast a ballot in machines that are consistent with the re-

quirements of the Help America Vote Act's accessibility requirements.

Mr. SCOTT. There were complaints in some States, particularly Ohio, that some people had to wait up to 10 hours in order to vote. If it were to be determined that an insufficient number of voting machines were put in precincts that created this backlog, would that be something that your Division would be interested in?

Mr. ACOSTA. Congressman, we would certainly enforce the Federal election laws that would—if it were determined that the number of election machines or the distribution was placed in a racially discriminatory manner.

Mr. SCOTT. Have you looked into that in Ohio?

Mr. ACOSTA. We are looking into several matters in Ohio, including that matter, as well as throughout the nation more generally.

Mr. SCOTT. We mentioned the new Attorney General. One of the issues that came up in his hearing was torture. What is the Civil Rights position on people being tortured or people being transferred to another country that will do the torture on our behalf?

Mr. ACOSTA. Congressman Scott, the President and the Attorney General have made clear and I will make clear that the Department of Justice does not tolerate torture. We do not tolerate abuse. That has been enunciated many times, and I will say that once again. We do not tolerate torture.

Mr. SCOTT. This Subcommittee had a hearing in Cincinnati recently involving black farmers. They're in litigation and there is a suggestion that since most of the people that filed for relief under the Pickford case were not able to get their cases heard on the merits because of a deadline that was missed, the suggestion is that that deadline should be waived. The Civil Rights Division of the Agriculture Department said they couldn't take a position on that waiver to allow people to have their cases heard on the merits because some other agency in Government was going to make that decision. Has the Civil Rights Division of the Justice Department been involved in that discussion?

Mr. CHABOT. The gentleman's time has expired, but you can answer the question.

Mr. ACOSTA. Congressman, I have not discussed this matter with the Department of Agriculture.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. I thank the Chairman and appreciate the hearing and appreciate your testimony, Mr. Acosta. As I listen to some of the responses with regard to the HAVA Act, I would direct a question to that and discussion about handicap accessible voting.

We will be seeking to meet that 2006 deadline, and as I understand it, it's likely to result in electronic voting machines in every precinct that are compatible with earphones and those type of add-ons that make it so that everyone can have a secure vote. I want to make it clear that I support that concept, but I would ask you if we could take—multiply this out, now, with an electronic voting machine in every precinct in America. I don't know how many precincts we have, but I know it's a lot. These voting machines are voting machines that are either wired in or just simply transferring the memory card to the county voting process.

How would we, not having anything but an electronic record, how would we conduct a recount in 2006 under these circumstances, especially keeping in the consideration that many of these precincts in America in the red zones in America are low population, not very many voters in each one, expensive for each precinct to provide that voting machine, and then they're out in remote locations where that might be the only voting machine in many of these precincts.

Mr. ACOSTA. Congressman, Congress in HAVA in the provisions that go into effect in 2006, in addition to requiring accessibility standards for voting machines, also provides for a permanent record manual audit trail capacity.

Mr. KING. And could you describe what that might be?

Mr. ACOSTA. The HAVA empowers the Election Assistance Commission to determine precisely what that is, so this is the EAC's decision. To my knowledge, they have not yet set standards on that.

Mr. KING. In fact, we may not at this point have the vaguest idea what that might entail should we have compliance by 2006 with electronic voting machines and no paper trail.

Mr. ACOSTA. Congressman, once again, the Election Assistance Commission is empowered to set those standards. The Department of Justice does not have authority to set those standards.

Mr. KING. And if those electronic voting machines were placed in a racially discriminatory fashion, though, you would have jurisdiction over that?

Mr. ACOSTA. That is correct, Congressman.

Mr. KING. Let me move to another subject matter and that would be Clinton's Executive Order 13166. I see by the nod of your head you're familiar with that. I wonder if you could inform the Committee today as to what kind of cost that might have entailed at this point and how we could anticipate which direction those costs might go in the future under that Executive Order.

Mr. ACOSTA. Congressman, I do not know the cost assessment for the Executive Order. I think it is important to acknowledge up front that the Executive Order is an important order that does provide for access to important Government services by individuals who do not speak English, but that it also acknowledges up front the importance of English language acquisition, which is something that the Department of Education works very closely and very hard on.

Mr. KING. So would you have a sense as to whether those costs are increasing or decreasing with regard to the obligations imposed by Executive Order 13166?

Mr. ACOSTA. Congressman, it's difficult to say. One of the economic realities is as something is used more, often, the costs go down. So, for example, one of the large costs in this Executive Order, obviously, this provides for translation services so that if individuals, for example, go to an emergency room, there is someone that can speak their language in providing medical services.

Obviously, as more translation services are called for, efficiencies can be created, efficiencies of scale, efficiencies through language lines via telephone and others that may decrease the cost of the

service. And so it's difficult to say with a moving target whether costs are increasing or decreasing.

Mr. KING. I thank the gentleman for his testimony and his responses and I'd have no further questions. Thank you, Mr. Chairman.

Mr. CHABOT. Okay. Thank you very much.

The gentleman from Michigan, Mr. Conyers, the distinguished Ranking Member of the overall Judiciary Committee, is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I want to begin by acknowledging that we have a number of members of the FBI here for this hearing, some of them formerly assigned to Detroit and some on the Committee, even, and we welcome them to this hearing.

Now, as Assistant Attorney General, you have, to me, one of the most important tasks of helping civil rights become the finished business of America, because it's still the unfinished business of America. You have a huge burden. I think most of us on this Committee are here to help you. I've been with this since the Voting Rights act of 1965 under—when Manny Seller was the Chairman a number of years back.

Now, your presentation here is seriously different from the warnings that I have been presented by my staff about problems that we're having, and this is understandable. You didn't come here to confess. This isn't a confessional. I mean, you've got to put on the best presentation for your Division that you can, and I don't blame you for that. But there are lots of problems, because you were telling me the most this and the more cases and more of everything. It would lead a lot of people to say, well, we're in pretty good shape.

So I see a couple of challenges here. One, that we have an Assistant Attorney General that is willing to confront the issues, and I commend you for that, but there are a lot of things that 5 minutes won't even begin to clear up. So I wanted to, as I mentioned to you before we started, we've got to set up some kind of channel of meeting, Mr. Chairman, because these issues are way too complex to take in 5-minute bites during this hearing.

But I also would like to ask if you would be willing to meet with the leaders of the major civil rights organizations in America who, in one sense, have the same responsibility that you do, and I don't know—and I'm not presuming that you have met or not met before, but it seems to me that that would be a hugely important signal and an opportunity for us to vet through some of these problems and I'd like to throw that out for your reaction.

Mr. ACOSTA. Thank you, Congressman. You raised several issues that I would like to take one at a time.

First, I am by no means here to confess. I'm very proud of the work we have done. At times, I get a bit frustrated over the fact that the work is not recognized, and I'll give you an example. Over a year ago when I had a hearing in the sister chamber across the way, a Member brought up the issue of employment discrimination and I took that very seriously. I sat down with my staff and I said, I want to see this move. I want to make sure we are making every effort we can make. And, in fact, last year, we brought more cases

than we have brought since the mid-1990's. We brought disparate impact cases. And yet, much of that goes unrecognized. I attribute that to perhaps a communications issue.

Last year, Mr. Scott raised the issue of arsons in houses of worship. Following Mr. Scott's questions on that, I sat down with the Bureau of Alcohol, Tobacco, and Firearms because I wanted a briefing to know what was happening in his district and in his State and nationally on that issue, and I have continued sitting down with them as a result of Mr. Scott's questions.

So I want to first acknowledge that we do take your concerns very seriously and it is far from a finished work, as I think my allusion to the "Voices of Civil Rights" story made clear.

Let me say that I'm very willing to work with yourself or with other Members. I sit down on a regular basis with leaders of civil rights groups. Last year, for the first time that I'm aware of, we invited leaders of civil rights groups to address our attorneys during a training on election matters where we invited Wade and Hillary and Karen Narasaki and others to come in, Barbara, to come in and to address, to talk about their concerns. I sit down with them regularly. I was in Selma just this past week. I'm going to be at the National Asian Pacific Bar Association dinner. I was the keynote speaker at their dinner in Texas this past year.

And so I'm a big believer in communications. I think it's important to have open channels, and I think that the leaders of civil rights organizations across the country would confirm that.

Mr. CHABOT. The gentleman's time has expired.

Mr. CONYERS. I want to thank you for that reaction. We want to expand these communications even further to this Committee, and I presume that the civil rights community is satisfied with their chain of communication with you and your Civil Rights Division.

Mr. CHABOT. Thank you very much, Mr. Conyers.

The gentleman from Florida, Mr. Feeney, is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman, and thank you, Mr. Acosta. In the materials that you submitted along with your statement, you referred to the enforcement of certain voting rights, and obviously you've got responsibilities in what I refer to as the pre-clearance counties. Is that both section 3 and section 6 identified counties?

Mr. ACOSTA. All counties identified by the Voting Rights Act for pre-clearance.

Mr. FEENEY. Could be generally referred to as pre-clearance counties?

Mr. ACOSTA. Correct.

Mr. FEENEY. But you have said that, not because of statutory basis, but because of common practice, the Justice Department increasingly is paying attention to illegal voting activities occurring outside what I refer to as pre-clearance counties. Is that right? And by what authority do you do that, just out of interest?

Mr. ACOSTA. Certainly, Congressman. The President, the Attorney General, the Department, and myself take voting rights very seriously. They are the bedrock of our democracy. The Voting Rights Act does give us specific jurisdiction and authorization to send election observers to certain polling places.

What we did this year, what we have done previously, but what we did in record numbers this year is we certainly sent election observers pursuant to the Voting Rights Act, but I asked my own staff, in the number of hundreds, to go out as election monitors. And what we do is we go into a jurisdiction and we say, "Would you mind if we watch?" And the Voting Rights Act does not tell us we can do that, but my staff can certainly fly somewhere and say, "Would you mind if we watch?" In several States, we had a presence this year where we have not had, and that has several salutary effects.

First, having the Justice Department Civil Rights Division present, I think helps deter election problems. And secondly, to the extent that problems may arise, we have individuals present who can report back——

Mr. FEENEY. Well, if I can, because I've got a limited amount of time, I appreciate the advantages, but it seems to me that you don't have any specific statutory authority there if you're asking for permission, and I guess I would ask you these questions, because I think a lot of us would be interested in beefing up enforcement activities.

Number one, is there anybody that has any authority outside pre-clearance counties in voting other than your Department and have they exercised that authority, to your knowledge?

Mr. ACOSTA. Congressman, not to my knowledge at the Federal level, and therefore, they have not exercised it.

Mr. FEENEY. Is it your opinion that somebody that intentionally votes multiple times illegally is in violation of Federal law, and have you prosecuted anybody for such activity?

Mr. ACOSTA. Congressman, certainly, they would be in violation. With respect to prosecutions——

Mr. FEENEY. Of Federal law or State law?

Mr. ACOSTA. They would be in violation of the law, if I could. With respect to prosecutions of Federal law, there is a bifurcation of responsibilities. The Civil Rights Division enforces the Voting Rights Act and other acts regarding ballot access. The Criminal Division, Public Integrity Section, enforces violations of Federal criminal laws, violations of voting fraud laws, and violations of other Federal election laws.

Mr. FEENEY. Is it a Federal crime to vote twice intentionally, in two different places, for example?

Mr. ACOSTA. It is certainly a crime——

Mr. FEENEY. Is it a Federal crime?

Mr. ACOSTA. I do not enforce the public integrity laws and so I would defer to the Criminal Division.

Mr. FEENEY. The Criminal Division. How about voting illegally, somebody that is not a legal voter but intentionally votes knowing full well that they are voting illegally?

Mr. ACOSTA. Congressman, again, if I could, my jurisdiction——

Mr. FEENEY. That would be the Criminal Division?

Mr. ACOSTA. That would be the Criminal Division.

Mr. FEENEY. Do you know anything about whether they have prosecuted either multiple voting or deliberate illegal voting?

Mr. ACOSTA. We have referred to them several matters of which we became aware that involved vote tampering, for example, and

I would ask that—and I'm happy to take the questions back to them——

Mr. FEENEY. One more, because my time is running out. How about organized mass protests in multiple areas, that in some areas result in trespass, assault, and battery? Would that be a violation of Federal law and would that be the Criminal Department, as well?

Mr. ACOSTA. Again, that would be the Criminal Division and I would defer to them on an answer.

Mr. FEENEY. Thank you. I yield back, Mr. Chairman.

Mr. CHABOT. The gentleman yields back. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Acosta, you may be aware that in addition to being a Member of this Subcommittee and the Judiciary Committee, I am currently the chair of the Congressional Black Caucus. I assume you read in the paper that I, along with 40 other members of the Caucus, met with the President and delivered to him an agenda on January 26. In fact, we delivered seven copies of it to him so it would expedite his delivery of it to Department heads.

One of the areas addressed in that agenda is disparities that exist in the Justice area. I would simply ask whether you are aware of whether the President has delivered that agenda to either the Attorney General or to the Civil Rights Division in follow-up to our meeting with him.

Mr. ACOSTA. Congressman, I am certainly aware of the agenda. I am aware that the meeting took place and of the concerns, and it would be inappropriate for me to speak for the Attorney General, but I would assume that he is sensitive to these concerns, as well.

Mr. WATT. Okay. Well, in the event he has not, I'm going to ask unanimous consent to submit for the record a copy of the Congressional Black Caucus agenda, which I will also deliver personally to you at the end of the hearing.

Mr. CHABOT. Without objection, so ordered.

[The information referred to is available in the Appendix.]

Mr. WATT. On June 23, 2004, Mr. Conyers, along with other Members of this Judiciary Committee, sent to you, or sent to Attorney General Ashcroft a letter regarding the Waffle House alleged pattern and practice of discrimination in public accommodations and we received a response from William E. Moschella dated August 13, 2004, in which he made this representation, that the Division is currently evaluating what, if any, action may be appropriate pursuant to the Attorney General's authority under title 2. Can you tell me what the status of that is?

Mr. ACOSTA. Certainly, Congressman. The issue that is raised—and I need to be a little careful in wording this—the issue that is raised is whether——

Mr. WATT. I know what the issue is. I'm just trying to find out what the status of the Department's investigation is.

Mr. ACOSTA. Congressman, the status is that I met recently with several representatives of plaintiffs, who provided information to us, I believe 2 weeks ago, perhaps 3 weeks ago—no, 2 weeks ago,

who provided information to us. We are currently evaluating it and we will be making a determination once we have completely reviewed that information.

Mr. WATT. Okay. Would you follow up with us when you move along in that so we can monitor the status of it, please?

Mr. ACOSTA. I will certainly follow up when we take public action.

Mr. WATT. All right. In follow-up to Mr. Conyers' questions, there seems to be a substantial disparity not only between what you have reported to this Subcommittee today and Mr. Conyers' staff, what they have reported to him, but there seems to be a substantial disparity between what you have reported today and a non-partisan research center study done by Syracuse University in 2003—actually, 2004. I am just going to zip through some of those disparities and ask you in follow-up to this hearing to respond to why there is such a dramatic difference between what you have reported here in your testimony and what this study suggests.

According to this, Federal prosecutors filed criminal charges against 159 defendants for violations of civil rights laws in 1999, and in 2003, only 84. During the same time period, charges against terrorism suspects increased dramatically and charges on weapons violations doubled. In addition, Federal charges on immigration violations increased more than 28 percent, according to this study. So maybe there is some double-counting in that area.

In 2003, prosecutors filed formal charges in only 5 percent of civil rights cases referred to them. By contrast, they chose to pursue formal charges in 90 percent of referred immigration cases. Civil rights complaints to the Government stayed steady, but civil rights sanctions against civil rights violators declined from 740 in 2001 to 576 in 2003. Civil rights cases also dropped—prosecutions in civil rights cases dropped from 3,053 in 1999 to 1,903 in 2003. During that same period, of course, terrorism prosecutions were up, but it seems, according to this study, that the Department is devoting substantially greater and greater resources to terrorism at the expense of civil rights.

So since our time is up, I would just give you a copy of this report and perhaps ask you to follow up in writing, and maybe there is some logical explanation for the disparities between the figures that you've given us and the figures that Syracuse University—this is not our staff, this is an independent body that says this.

Mr. CHABOT. The gentleman's time has expired, but Mr. Acosta, if you would like to address the question——

Mr. ACOSTA. Thank you, Mr. Chairman. I saw that report and I was very upset when I saw it. I asked my staff to contact Syracuse University to determine their methodology. I also asked my staff to get me a list of all our cases going back. I wanted the actual case names listed so I could count them.

Mr. WATT. You can provide that to us.

Mr. ACOSTA. Let me say, I'd be happy to provide that.

Mr. WATT. Okay.

Mr. ACOSTA. We have not heard back regarding their methodology. They, as far as I understand, had taken information from multiple sources, put it in an algorithm, and determined a final

number. We went through, and I will happily provide the case names because last year was a record year.

With respect to the percentage of charges, let me respond. The number of investigations in the civil rights area that result in prosecutions is a smaller percentage than other areas, but that is a reflection of the fact that the Civil Rights Division believes it is better to open an investigation and even if there is not a lot there, then subsequently determine not to charge. In other words, our erring on the side of checking something out is responsible for the fact that the percentage of investigations actually charged is lower in that area, and I think that's a good thing.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentleman from Maryland, Mr. Van Hollen, is recognized, and we also want to welcome you to the Committee. We are very pleased to have you as a new Member.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. It's a privilege to join you.

Mr. Acosta, thank you for your testimony. I had a few questions related to the Justice Department's role in the faith-based initiative in the White House, and let me just say that I think all Americans agree that one of the founding principles of this country was to make sure that individuals had the right to religious liberty and to make their own decisions regarding their faith without interference from the Federal Government. And there's no argument about the very important role faith-based organizations play probably in each of the Congressional districts we live in around the country.

And there's no dispute, either, as to the fact that faith-based organizations have received public funds and have done great work with public funds in the area of job training, in the area of Head Start, tsunami relief internationally, Catholic Charities, Jewish Federation, a whole range of Protestant groups, other groups around the country. So that's not the issue.

The issue is when these organizations receive Federal funds, taxpayer dollars paid by people of all different faiths in this country, and they're using those funds for secular purposes, because I think we would all agree you can't take Federal dollars to promote a particular religion, so they're taking these funds for a secular purpose, like job training. Why you don't think that it is legally wrong or a violation of the Establishment Clause of the Constitution to be able to take those taxpayer dollars and then turn around and say it's a job training program that's being offered and someone who has long experience providing job training experience, has a great education applies for the job, secular purpose using Federal taxpayer dollars, why you think it's proper that that organization should be able to say to that person, we're not going to hire you, not because you're not qualified, not because we don't think you've got the top person for the job, but you just don't pass our private religious test. Could you answer that for me, because I know the Justice Department has taken a position in several cases.

Mr. ACOSTA. Congressman, certainly. You are, in essence, alluding to much of what we do under faith-based programs, and I'd start off by saying with respect to the legal question, Congress itself in title 7 recognized that religious organizations should have

autonomy and should have the ability to preserve their natural character. Congress, when it enacted title 7 of the Civil Rights Act, under section 702, exempted religious organizations, allowing them to use religion as a criteria in hiring. So as a legal matter, Congress itself has made the determination that——

Mr. VAN HOLLEN. I know my time is short. If I could just break in, you would agree, would you not, that that act, the 1964 Civil Rights Act, did not answer the question with respect to the use of taxpayer dollars and how that affects whether or not a religious institution has the right to discriminate based on religion? You would agree with that, would you not, because I can tell you, I've got the transcripts from the hearings back then. Sam Irvin raised this point. It was very clear that what he was worried about at that time was making sure that we weren't saying as part of the 1964 act to the Catholic Church, for example, that you've got to hire a non-Catholic for a priest, or as a priest, I mean, or for those parts of your mission which are religiously oriented. It doesn't speak at all—in fact, it's very clear they weren't—he went out of his way to say he was talking about situations that did not involve taxpayer money.

So this has been discussed. So I just want to make sure I understand from a legal point of view, is it your position that that act itself contains within it the authorization to say to a religious organization that receives public dollars that in the use of those public dollars, you can discriminate based on religion?

Mr. ACOSTA. Congressman, the act in title 7 says that a religious organization can consider religion in hiring. That organization is then authorized by law to apply for grants, and so long as, for example, the Salvation Army is permitted to apply for grants and if it competes for a grant, for example, to run a soup kitchen or to provide housing or other social services, and it provides those services without any religious character, without any evangelizing, and it provides those services to all individuals without account, taking into account religion, there is no legal prohibition in the Salvation Army competing on an equal and non-discriminatory basis with every other organization to provide grants. And, in fact, it might be able to provide those grants more effectively.

Mr. CHABOT. The gentleman's time has expired, but if he would like to make a follow-up, a brief point here, he may.

Mr. VAN HOLLEN. I thank you, Mr. Chairman. I appreciate that. I don't think the question is whether they're allowed equal opportunity to apply for grants. Of course, they are. Any faith-based organization, whether it's a Catholic organization, Jewish, or whatever, obviously has an equal right to apply for Federal grants.

The issue at stake here, and Mr. Chairman, thank you for the little additional time and I'll just end with this statement—this issue is not whether they have an equal right to apply for Federal funds. The question is whether it's right, both from a moral perspective, from a legal perspective, or just the right thing to do, to say to somebody who's been paying taxes and applies to that job, in the case of the Salvation Army, someone from the Jewish faith, to provide a job training service or provide help in the soup kitchen, whether the Salvation Army should be able to say to them, "Sorry, you're the wrong faith."

Thank you, Mr. Chairman.

Mr. CHABOT. Mr. Acosta, did you want to respond to that or not?

Mr. ACOSTA. We could go on and on. I'll leave it at that.

Mr. CHABOT. Very good. Thank you very much. Thank you.

The gentleman from Arizona is recognized for 5 minutes, Mr. Franks.

Mr. FRANKS. Thank you, Mr. Chairman, and thank you, Mr. Acosta. I appreciate your report here. There's a lot of very encouraging elements of it. I was particularly impressed by your efforts with regard to trafficking. It looks like you've started about 19 different trafficking task forces, and as it happens, one of them is in the Phoenix area, where I'm from. It just looks like you're making a lot of progress in that regard, especially the fact that it's become victim-focused and this new T-visa that you have is pretty exciting.

Having said that, these trafficking people that are essentially modern-day slaveholders, what are we doing at this point to even further intensify our efforts in this regard and do you have any things that you see as a matrix that you think is really the heart of the problem and the way to address it?

Mr. ACOSTA. Thank you for the question, Congressman. You raise a very important issue, an issue that I think is getting more national attention, and as a result, we are getting more cases.

We currently have 208 open investigations. By way of comparison, in the year 2000, there were three cases brought and charging five defendants, to give you an example of the numbers. I'm very gratified by the progress we have seen, but I think we need to recognize that it is only a start, that the problem of trafficking is much larger.

I think going forward into the future, it's important that we work with jurisdictions and we work with localities. That is why following the President's attendance at our national conference in Tampa, we started opening these task forces around the country, because local police are the boots on the ground that know where trafficking takes place. Local service providers and faith-based organizations are important parts of our effort in this because victims often don't speak the language. They are scared. They are not going to come to us. But they will go to a local faith-based organization. They will go to a local service provider. And so we make sure that those providers are always involved in the task forces.

Lastly, as part of the effort to emphasize the importance of local enforcement, I think it's important to note that it's important for States to have strong anti-trafficking laws. Congress a few years ago took strong efforts to intensify our trafficking laws through the Trafficking Victims Protection Act. We have placed a model law in public circulation, a model State law. We're not encouraging or discouraging States in any appropriate way, but we just thought it would be useful to further discussion, because the majority of States have not updated their trafficking laws.

It's important to recognize that traffickers don't use physical force often. They use fraud or psychological coercion or threats of violence or document abuse, and it's important for prosecutors to have those additional tools available when we go to prosecute.

Mr. FRANKS. I think it's just an astonishing statistic to go from three cases that are being investigated to 208. Did I hear you correctly?

Mr. ACOSTA. Correct.

Mr. FRANKS. Do you attribute that to prevalence, to greater focus, to kind of getting dialed in on what these people are doing? What is—that's an amazing increase.

Mr. ACOSTA. Congressman, several factors. First, the President has made this a top priority. He has spoken on the issue several times before the United Nations. He attended our national conference in Tampa. He has made this an issue for his Administration.

Second, we are working much more closely with State and local jurisdictions. It's very difficult from Washington to find these cases. These task forces in cities like Phoenix and in other cities really are the way to find these cases and we need to decentralize the effort so that we can find these cases much more.

Mr. FRANKS. I just appreciate your good efforts, sir, very much. Thank you. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. The gentleman yields back his time.

The gentleman from Virginia has requested, and we've granted, he's going to ask a couple additional questions. He's assured me he'll keep them relatively brief and you can keep your responses succinct, if possible. Thank you.

Mr. SCOTT. Thank you. Mr. Acosta, are you familiar with the Death in Custody Act?

Mr. ACOSTA. Congressman, I am not.

Mr. SCOTT. It requires any death in the custody of the State that is during arrest, in prison, to be reported to the Justice Department.

Mr. ACOSTA. Yes.

Mr. SCOTT. Okay. Are you doing anything with that information?

Mr. ACOSTA. Congressman, a special litigation section enforces a statute CRIPA, Civil Rights of Institutionalized Persons Act. We review instances of problems in juvenile facilities or in jails, and where there is a higher or where there is an unacceptable degree of violence, then we do open investigations. We opened 14 investigations under CRIPA last year.

Mr. SCOTT. Are you looking for patterns and practices, how you can try to—the purpose of it is to get a database so you can see what's going wrong and looking for patterns. I mean, I'd assume that if it had been done a few years ago, you'd find that chokeholds would probably not be a good idea because you're killing people, and you wouldn't get that information without that database. I would ask you to review the data to see if there's anything we ought to be doing legislatively as a result of this information that we didn't have before.

Second question is, under the pre-clearance provision, there's some requests that are pre-cleared that some of us found, frankly, disagreed with. The letter of submission is just a terse statement that you reviewed it and approve it. Who would we contact to get the staff memos so we would find what the analysis actually was?

Mr. ACOSTA. Congressman, as you're aware, whatever deliberations take place at the Department of Justice are internal and are privileged attorney communication.

Mr. SCOTT. Okay. But you don't have to make it privileged. I mean, you can release it if you want.

Mr. ACOSTA. Congressman, the Department of Justice for decades has exerted deliberative and attorney privilege with respect to internal attorney-to-attorney discussions.

Mr. SCOTT. The third question is a follow-up to the gentleman from Maryland, Mr. Van Hollen, on whether or not a religious organization has the statutory right to discriminate based on religion, and you kind of went back and forth on that. Under the Clinton administration, the interpretation was that a religious organization couldn't get direct funding, so the issue would never come up.

The Cleveland voucher case went to great lengths to point out that it wasn't the State making the decision as to which school got the money, it was the parent. That discussion would be bizarre if the State could have written a check straight to the parochial school. I think there's an understanding that you cannot directly fund a pervasively sectarian organization.

Is it your contention that the Federal Government can contract directly with a church, directly fund a church and contract with that church for the provision of Government services?

Mr. ACOSTA. Congressman, first, let me say I don't think I went back and forth. I think I made clear that there was no—responding to the question that there was no legal prohibition. And, in fact, Executive Order 13279 makes clear that except as otherwise——

Mr. SCOTT. Is that President Bush's Executive Order?

Mr. ACOSTA. Yes, it is——

Mr. SCOTT. It's not President Johnson's Executive Order.

Mr. ACOSTA. It is the Executive Order in effect. It's the Executive Order that has been signed by a President. It makes clear that it's perfectly appropriate for organizations to apply on an equal basis, on a nondiscriminatory basis, for distribution of Federal funds so long as—or for Federal grants so long as they do not, one, inject religion into their programs or services, and two, do not discriminate in the provision of programs and services to recipients.

Mr. SCOTT. Well, I think you're aware that you can never waive the Establishment Clause with an Executive Order. Are you saying that the Establishment Clause allows or does not allow direct funding of a pervasively sectarian organization like a church? Can the Federal Government contract directly with a church for the provision of Government services?

Mr. ACOSTA. Congressman, the Establishment Clause does not prohibit an organization like the Salvation Army or a similar religious group from providing services pursuant to a Government grant so long as it does so without injecting religion into the provision of services and so long as it does so on a non-discriminatory manner in the selection of recipients of those funds.

Mr. SCOTT. That means, yes, you can directly fund a pervasively sectarian organization?

Mr. ACOSTA. That means that organizations can receive Federal grants——

Mr. SCOTT. Okay. Now just one other kind of question. If the religion is intertwined in the services, like a prison program where you have to—where there's a Christian prison program, would that qualify for direct funding?

Mr. ACOSTA. Congressman, I would certainly want to look at the degree of intertwining, the nature of the program, the extent to which religion is part of that program, and that is something we'd have to look at.

Mr. CHABOT. The gentleman's time has expired.

Mr. Watt, did you want to——

Mr. WATT. I just wanted to make a couple of unanimous consent requests.

Mr. CHABOT. Okay. Without objection, you're recognized.

Mr. WATT. I ask unanimous consent, just to complete the record, that a letter from Members of this Committee to John Ashcroft dated June 23, 2004, and the response from Assistant Attorney General Moschella dated August 13, 2004, related to the Waffle House case be made a part of the record so that everybody would know what I was asking about.

Mr. CHABOT. Without objection, so ordered. Those are entered into the record.

[The information referred is available in the Appendix.]

Mr. WATT. And I think I already got unanimous consent to put the agenda in, didn't I?

Mr. CHABOT. I believe that is correct, but if not, it's entered at this time, as well.

Mr. WATT. Thank you.

Mr. CHABOT. Okay.

Mr. SCOTT. Mr. Chairman?

Mr. CHABOT. Yes, Mr. Scott?

Mr. SCOTT. Mr. Chairman, I'd ask unanimous consent that all Members have five legislative days to revise and extend their remarks, include additional materials in the record, and to submit to the witness additional questions in writing for written response.

Mr. CHABOT. Without objection, so ordered.

Mr. WATT. And can I just be clear, Mr. Chairman, that we're going to get some follow-up on the questions that we asked about?

Mr. CHABOT. Yes, and Mr. Acosta has just indicated in the affirmative.

Mr. Acosta, we want to thank you for your testimony here this morning. There's nothing that this Committee has jurisdiction over or deals with that's more important than making sure that the civil rights laws in this country are enforced to the letter. And I want to commend you for your, I believe, very candid testimony here this morning. You have always been very open with the Committee and we appreciate that very much.

If there is no further business to come before the Committee, we are adjourned. Thank you.

[Whereupon, at 11:32 a.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

CONGRESSIONAL BLACK CAUCUS AGENDA FOR THE 109TH CONGRESS, SUBMITTED BY THE HONORABLE MELVIN WATT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION

The Congressional Black Caucus Agenda for the 109th Congress

THE CONGRESSIONAL BLACK CAUCUS AGENDA FOR THE 109th CONGRESS

"CLOSING DISPARITIES AND CREATING OPPORTUNITY"

- ***CLOSING THE ACHIEVEMENT AND OPPORTUNITY GAPS IN EDUCATION***
- ***ASSURING QUALITY HEALTH CARE FOR EVERY AMERICAN***
- ***FOCUSING ON EMPLOYMENT AND ECONOMIC SECURITY, BUILDING WEALTH AND BUSINESS DEVEOPMENT***
- ***ENSURING JUSTICE FOR ALL***
- ***GUARANTEEING RETIREMENT SECURITY FOR ALL AMERICANS***
- ***INCREASING EQUITY IN FOREIGN POLICY***

INTRODUCTION

Since the formation of the Congressional Black Caucus (CBC), the core mission of the CBC has been to close (and, ultimately, to eliminate) disparities that exist between African Americans and White Americans in every aspect of life. These continuing and troubling disparities make it more difficult, and often make it impossible, for African Americans to reach their full potential. In pursuing the core mission of the CBC, the CBC has been true to its motto that "the CBC has no permanent friends and no permanent enemies, just permanent interests."

The CBC acknowledges the unfortunate fact that disparities between African Americans and White Americans continue to exist in 2005 in every aspect of our lives and that the historical mission of the CBC has not yet been fully accomplished. Therefore, the members of the CBC have adopted this Agenda in the 109th Congress that recommits us to the historic mission of the CBC – working to close and eliminate disparities and toward the goal of full equality. Consistent with our motto, we will continue to work with all who are willing to work with us to help advance our Agenda and achieve this goal.

The following are among the many substantive areas in which disparities continue to persist, and some of the positions the CBC supports to close and eliminate the disparities in these areas:

"CLOSING THE ACHIEVEMENT AND OPPORTUNITY GAPS IN EDUCATION ..."

Providing a high quality education to all public school students is the most critical path to achieving our objectives in all areas of our Agenda. To do so, the CBC supports devoting more attention and, where necessary, more resources to:

1. Supporting early childhood nutrition, Head Start and movement toward universal pre-school;
2. Providing student nutrition, identifying and providing education and assistance appropriate to the needs of each individual student to fulfill the promise of *No Child Left Behind*, dropout prevention, after-school programs, school modernization and infrastructure and equipment enhancement;
3. Increasing the availability of Pell Grants, scholarships, loan assistance and other specialized programs to enable and provide incentives to more African American students to obtain college, graduate or professional degrees or otherwise receive training and retraining to meet changing job needs; and
4. Preserving and improving Historically Black Colleges and Universities.

The following are some of the dramatic disparities that the CBC believes would be reduced by the above priorities:

- ✓ In 2003, 39% of African American 4th grade students could read at or above a basic reading level compared to 74% of White 4th grade students, and 39% of African American 8th grade students performed at or above a basic math level compared to 79% of White 8th grade students;
- ✓ High school completion rates – 83.7% for African Americans, and 91.8% for Whites;
- ✓ Bachelor Degree recipients – 16.4% for African Americans, and 31.7% for Whites; and
- ✓ Digital Divide – 41.3% of African Americans are capable of accessing the Internet, compared to 61.5% of Whites.

"ASSURING QUALITY HEALTH CARE FOR EVERY AMERICAN…"

The CBC supports:

1. Emphasizing universal access, affordability and prevention;
2. Providing meaningful coverage for prescription medications to every American; and
3. Increasing African American representation across all health care professions.

Among the dramatic disparities the CBC believes could be reduced by doing so include:

- ✓ In December 2004, the American Journal of Public Health reported that 886,000 more African Americans died between 1991 and 2000 than would have died had equal health care been available;
- ✓ While African Americans comprised approximately 12% of the U.S. population in 2000, they represented 19.6% of the uninsured;
- ✓ African American men experience twice the average death rate from prostate cancer;
- ✓ In 2002, the African American AIDS diagnosis rate was 11 times the White diagnosis rate (23 times more for women and 9 times more for men);
- ✓ African Americans are two times more likely to have diabetes than Whites, four times more likely to see their diabetes progress to end-stage renal disease and four times more likely to have a stroke; and
- ✓ African Americans are only 2.9% of doctors, 9.2% of nurses, 1.5% of dentists and 0.4% of health care administrators, yet African Americans comprise 12% of the population.

"FOCUSING ON EMPLOYMENT AND ECONOMIC SECURITY –BUILDING WEALTH AND BUSINESS DEVELOPMENT…"

The CBC supports:

1. Eradicating employment discrimination and ensuring the employment of a diverse work force by employers in the private sector and in government (including staffs of Committees and Members of Congress);
2. Protecting the rights and working conditions of all employees;
3. Providing support to enable people to work such as child care, transportation, health care, job retraining and a living wage;
4. Promoting the advancement of African Americans into management, executive and director positions;
5. Providing equal access to capital for individuals and businesses and the elimination of redlining and predatory lending practices;
6. Expanding affordable rental and ownership of housing; and
7. Achieving aggressive minority business goals and participation in government and private contracting.

Among the dramatic disparities the CBC believes would be reduced by pursuing these policies are the following:

- ✓ Unemployment rates for African Americans are consistently almost double the rates for White Americans;
- ✓ The median weekly earnings of full-time African American workers is consistently over $130 less than White workers who are similarly educated and situated;
- ✓ The poverty rate for African Americans is almost double the national poverty rate (24% vs. 12.5%) and more than triple (33% vs. 9.8%) for children under the age of 18;
- ✓ Home ownership for African Americans is 48% compared to 72% for White Americans and African Americans are more than two times more likely to be denied a mortgage and more than two times more likely to receive predatory loans; and
- ✓ Minority-owned businesses receive only 57 cents of each dollar they would be expected to receive based on the percentage of "ready, willing and able" businesses that are minority owned.

"ENSURING JUSTICE FOR ALL..."

The CBC supports:

1. Guaranteeing equal access to vote, making sure that every vote is counted, extension of the expiring provisions of the Voting Rights Act, and reinstatement of voting rights after criminal defendants have served their sentences;
2. Ending racial and ethnic profiling;
3. Advocating for Criminal and Juvenile Justice Reform that focuses greater emphasis on prevention and rehabilitation, reduces recidivism by successfully reintegrating former inmates into society and ends arbitrary mandatory minimum sentences;
4. Appointing fair and impartial Judges; and
5. Preserving Affirmative Action until all the effects of past and present discrimination have been eliminated.

Among the dramatic disparities the CBC believes would be reduced by pursuing the above policies are the following:

- ✓ Practices of the kind documented in Florida in 2000 and in Ohio in 2004, the latter in a 100+ page Investigative Report issued by members of the House Judiciary Committee in January 2005; and
- ✓ While African-American men represent approximately 6% of the total population, they represent 44% of all male inmates in State and Federal prisons and jails (an estimated 12% of black males) and African-American females are five times more likely than White females to be incarcerated.

"RETIREMENT SECURITY FOR ALL AMERICANS..."

The CBC supports:

1. Preserving Social Security as a safety net for older Americans and guaranteeing that Social Security benefits continue to be paid; and
2. Making it possible for people of all income levels to accumulate assets and save for retirement as a means of supplementing their Social Security benefits.

Among the realities the CBC believes the above policies would help address are the following:

- ✓ Social Security benefits are the only source of retirement income for 40% of older African Americans and without these benefits the poverty rate for African American seniors would more than double; and
- ✓ 28% of African Americans receive income from assets upon retirement compared to 62% of White Americans and 32% of African American retirees receive income from private pension plans compared to 45% of White American retirees.

"INCREASING EQUITY IN FOREIGN POLICY…"

The CBC supports:

1. Reaching the Millennium Goals for developing countries;
2. Eradicating poverty, hunger and armed conflicts in countries around the world, especially in Africa and the Caribbean;
3. Reducing the heavy burden that debt has on many countries; and
4. Reengaging with the United Nations, regional organizations and countries throughout the world to help promote civil society, global health, fair trade and peace and to help combat terrorism and increase security at home.

Among the realities the CBC believes the above policies would help address are the following:

- ✓ Nearly 1.3 billion people around the world live in poverty and do not have safe drinking water;
- ✓ More than one-third of the world's children are malnourished;
- ✓ Within the last ten years, approximately two million children have been killed in armed conflicts, many after being forced to be child soldiers;
- ✓ Many poor countries spend 30%-40% of their annual budgets on repaying their foreign-held debt (often more than they spend on health and education combined); and
- ✓ Horrific conditions can lead individuals to become more disaffected and susceptible to recruitment by terrorist organizations.

OTHER PRIORITY AREAS

There are many areas in addition to the above in which disparities continue to exist and on which the CBC Action Agenda will also focus. Some of these areas include building stronger African American families, improving the welfare of children, increasing African American political representation, reducing inequities and improving opportunities for African Americans to advance in the military, documenting and preserving African American history by assuring that financing and construction of the African American Museum moves forward and eliminating waste, fraud, abuse and disparities in every area of government.

CONCLUSION

The mission and objective of the CBC and our Agenda for the 109th Congress continues to be improving the condition of African American people. However, the CBC has never sought to limit the benefits of its endeavors to African Americans. Indeed, the members of the CBC firmly believe that the priorities outlined in this Agenda will benefit all Americans and will make our country better for all people. We invite all Americans to join us in the quest to remove disparities and barriers that increase the burden or make it impossible for individuals to achieve their full potential. African Americans will be better for it and America will be better for it, too.

LETTER FROM MEMBERS OF THE COMMITTEE ON THE JUDICIARY, DATED JUNE 23, 2004, TO THE HONORABLE JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES, U.S. DEPARTMENT OF JUSTICE, AND RESPONSE, DATED AUGUST 13, 2004

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June 23, 2004

VIA HAND DELIVERY

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: ***Request for Department of Justice Investigation of Complaints Against Waffle House Alleging A Pattern and Practice of Discrimination in Public Accommodations.***

Dear Mr. Attorney General:

We write to request your attention to the possibility of significant infringements of the rights of African Americans to equal enjoyment of public accommodations at Waffle House restaurants, similar to the ones recently disclosed at Cracker Barrel. Continuing reports of race discrimination at Waffle House restaurants throughout the country have resulted in dozens of individual civil rights lawsuits against Waffle House and seem to us to justify your evaluation of whether "pattern and practice" litigation by the Civil Rights Division would be advisable.

Our review of complaints from constituents, media reports and pleadings filed by some the country's most highly respected lawyers indicates that hundreds of African Americans allege that they experienced race discrimination in seeking service at various Waffle House restaurants throughout the United States. This pattern of discrimination seems not to have changed in response to individual lawsuits, some of which have been adjudicated or settled on confidential terms.

The discrimination alleged by African Americans seems to occur almost always in the context of small marketplace transactions where speed and convenience are significant features of the product being purchased. While denial of service or hostile or delayed service is often

The Honorable John D. Ashcroft
Page Two
June 23, 2004

dismissed under these circumstances as just a fact of life, many African American citizens are standing up to this discrimination. They allege that Waffle House has been remarkably unresponsive to their complaints, either at individual restaurants or at the corporate headquarters.

While some of these citizens are fortunate to have widely respected lawyers and law firms to represent them, we have serious concerns that individual litigation is not delivering the message to Waffle House that discrimination, whether on a grand scale or in a pattern of individual instances, is no longer acceptable in our society. We believe that the DOJ is perfectly positioned to conduct an investigation to determine if there is indeed a pattern and practice of discrimination and, if the investigation suggests that there is, to utilize the "pattern and practice" litigation techniques that are not available to individual litigants.

This alleged pattern of discrimination, as reprehensible and as inconsistent with Waffle House's own self-interest as it may be, will continue for the foreseeable future unless the Department of Justice takes action. We, therefore, encourage you to take action to stop this unacceptable conduct.

Sincerely,

John Conyers, Jr.

Howard L. Berman

Jerrold Nadler

Robert C. Scott

Melvin L. Watt

Zoe Lofgren

Sheila Jackson Lee

Maxine Waters

Martin T. Meehan

William D. Delahunt

Robert Wexler

Anthony D. Weiner

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 13 2004

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Conyers:

This responds to your letter dated June 23, 2004, to the Attorney General requesting that the Civil Rights Division ("the Division") evaluate whether "pattern or practice" litigation by the Division against Waffle House restaurants would be advisable. We are sending a similar response to the 11 co-signers of your letter.

Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a(a), prohibits discrimination on the basis of race, color, religion or national origin in places of public accommodation, including restaurants whose operations affect commerce. The Attorney General may enforce Title II whenever he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by [Title II], and that the pattern or practice is of such a nature and is intended to deny the full exercise of [those] rights." 42 U.S.C. § 2000a-5. Under Title II, the Attorney General can seek injunctive relief aimed at changing policies and practices to remedy discrimination against customers, but it does not authorize the Attorney General to obtain specific relief, such as monetary damages, for individuals who are victims of discrimination. Since January 2001, the Civil Rights Division has resolved 14 cases and investigations involving alleged violations of Title II, including its recent settlement with Cracker Barrel Old Country Store, Inc. As Assistant Attorney General for Civil Rights, R. Alexander Acosta stated recently upon announcing the settlement of the litigation against Cracker Barrel, "To discriminate on the basis of race in the provision of food and service tramples most gravely not only the civil rights laws, but also our nation's promise of equality."

With regard to allegations that Waffle House restaurants may be engaging in racial discrimination against African American customers, the Division is currently evaluating what, if any, action may be appropriate pursuant to the Attorney General's authority under Title II.

Thank you for bringing this matter to our attention. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable F. James Sensenbrenner
Chairman

RESPONSE TO POST-HEARING QUESTIONS FROM R. ALEXANDER ACOSTA, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 24, 2005

The Honorable Steve Chabot
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses to questions arising out of the appearance of Assistant Attorney General R. Alexander Acosta before the Committee on March 10, 2005, concerning oversight of the Justice Department's Civil Rights Division. We hope that this information is useful to you.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Jerrold Nadler
Ranking Minority Member

I. Previous Subcommittee hearings have included discussion of the status of the Division's efforts to bring to a close the hundreds of public desegregation cases in which the United States is either a party to or appears as an amicus. The Subcommittee would like to follow-up on the work that the Division has been able to accomplish since our last status update on these efforts.

A. How many consent decrees are currently pending?

The Division is currently a party in cases involving 341 elementary and secondary school districts that operate pursuant to court approved desegregation orders. These include both consent orders and orders entered by the court without the agreement of the parties.

B. What is the average number of years that consent decrees have been pending?

Virtually all of the cases involving the 341 school districts referred to above were filed in the 1968-71 period, and most initial orders were entered in that time period.

C. How many lawyers are currently assigned to each case?

The Division now conducts regular case reviews to evaluate compliance with applicable court orders. Each review begins with a Deputy Chief in the Education Section, and is then assigned to a trial attorney as appropriate for further review. These reviews identify cases in which additional relief is warranted, or in the alternative in which the education agency may be an appropriate candidate for unitary status. All attorneys in the Education Section, currently staffed with 18 FTEs, are involved in this process.

D. How many times each year does the Division review cases?

The Division reviews cases in one of two ways. First, the Division reviews cases through the litigation process: as issues arise; when motions are filed; as information comes to our attention regarding possible violations; and when school districts request unitary status.

Second, the Division now conducts regular case reviews to monitor Districts' compliance with court orders. These reviews identify cases in which additional relief is warranted or, in the alternative, are appropriate candidates for unitary status.

In FY 04, we initiated a record number of such reviews (44) and to date in FY 05 we have initiated 23 case reviews.

E. Has the Division acted in any cases in the last six-to-twelve months?

Yes. Public filings by the Division are regularly provided to the Committee in response to its standing request and the Division's recent actions are recorded therein.

F. How many schools currently under consent decrees have attained unitary status?

Unitary status can only be attained through a declaration by the court. Accordingly, school districts that operate pursuant to a court order have not yet attained unitary status; otherwise the order would have been dissolved. However, we have identified 41 school districts that we believe are at a compliance level where a court hearing to determine whether unitary status has been achieved would be appropriate. We have informed each jurisdiction of that determination. Of the 41 districts, 14 districts are non-responsive. Ten cases are currently before the district court either waiting for the court to sign an agreed-upon order or where the Division notified the court that it does not oppose the district's motion for unitary status. In 9 cases, we are awaiting response from other plaintiff parties and are actively working on reaching agreements. The remaining 8 are at other stages of the unitary status process.

G. What number of school districts are non-responsive to your efforts to inform them that they've reached unitary status and that there no longer remain any issues left for a court to oversee?

Fourteen (14).

H. How many consent decrees, on average, do you wish to terminate on an annual basis?

The Division is working diligently to resolve each and every open school desegregation case. Each such open case represents a possible unremedied vestige of *de jure* discrimination. The Supreme Court has made clear that the vestiges of *de jure* segregation must be eliminated to the extent practicable, and that control over school systems return to responsible local officials as promptly as possible. We are working hard to meet this important mandate.

Cases should not be closed according to a numeric goal, but rather only when the demands of the Constitution have been satisfied. In FY 04, 20 school consent decrees were dismissed upon a judicial determination that they had satisfied the requisites for unitary status, and thus far in FY05 seven (7) decrees similarly have been dismissed.

I. How many consent decrees are terminated each month?

Again, it merits mention that the closure of such matters in not an end in itself, and is appropriate only when the conditions identified in response to Question I.H., *supra*, are met.

For the last fiscal year, and the current fiscal year, here are the numbers of consent decrees dismissed each month:

For FY05:	For FY 04:
	2 November
2 October	3 December
2 February	1 March
2 March	1 April
	3 May
	3 June
	4 July
	2 August
	1 September

J. Would you support a legislative requirement that the Department issue an annual status report on its desegregation cases?

The Division regularly provides the House Judiciary Committee with copies of all of its public documents in response to a standing request. As a result, the Department does not see a need for an additional statutory reporting requirement.

II. A. Following September 11, the Department has been diligent in investigating allegations of civil rights abuses. Can you describe Department efforts to have claims of post-September 11 civil rights and liberties abuses reported to the United States Commission on Civil Rights referred to the Department for investigation and, if appropriate, prosecution.

In the immediate aftermath of 9/11, the Division discussed with the Commission the need to refer complaints received by the Commission to the Division for investigation and, if appropriate, enforcement. The Division continues to work with Commission staff to ensure that such complaints are appropriately handled.

B. How would you rate the success of your efforts to educate the public regarding the complaint filing process and the Division's services?

The Division believes that educating the public about the statutes the Division is charged with enforcing is important for the Division to carry out effectively its task of enforcing the nation's civil rights laws. Education is key to making the

public aware of the requirements of federal law, and ensuring that potential violations are brought to the attention of the Division.

Because of the importance of the Division's public education role, the Division has undertaken a vigorous and successful effort to educate the general public about how they may access and benefit from the Division's services in its major areas of responsibility.

Division staff, from senior management to line attorneys in all sections, participate in the Division's outreach and education efforts. For example, Assistant Attorney General Acosta has met with representatives of more than 150 groups or organizations during his tenure.

These public education efforts have included technical assistance, expanded information on the Division's websites, newsletters, detailed press releases, training sessions, and attendance at conferences and conventions. The Division has engaged in substantial outreach efforts in nearly all of the Division's areas of responsibility.

Criminal

For example, the Division has engaged in substantial efforts to increase prosecutions of human traffickers, protect victims of trafficking, and prevent trafficking from occurring. Last summer, President Bush attended the first ever National Training Conference on Human Trafficking organized by the Department. This session brought prosecutors and service providers from across the country to Tampa, Florida, and contributed to substantially raising the visibility of the human trafficking issue.

In conjunction with the Departments of State, Health and Human Services, and Labor, the Department has produced two brochures – one is for local law enforcement to provide to potential victims of trafficking and the other is directed at non-governmental organizations, such as service providers and other community-based organizations, to use as a reference guide to help trafficking victims. The Department helped to establish 19 human trafficking task forces in major urban areas around the country. These task forces bring together Federal, state, local, and non-governmental actors to combat trafficking and provide comprehensive assistance to victims. Additionally, public service announcements have been issued in Spanish, Russian, Polish, Chinese, and Korean to inform victims of their rights.

In addition, the Division has also conducted a series of training programs for local law enforcement agencies and non-governmental organizations in Tampa, Orlando, El Paso, Houston, Connecticut, Las Vegas, Albuquerque, St. Louis and San Francisco. All the trainings were extremely well received. We are also in the process of developing a model curriculum for the victim-centered approach to

identifying and rescuing trafficking victims and investigating and prosecuting their traffickers and abusers.

The Division also regularly produces the *Anti-Trafficking News Bulletin*, available at http://www.usdoj.gov/crt/antitraffic_bull.html. This publication highlights the Department's anti-trafficking efforts.

Post 9/11 Backlash

The Division has also continued its Initiative to Combat Post 9/11 Discriminatory Backlash, and maintains a web page at http://www.usdoj.gov/crt/nordwg.html that contains information about the civil rights violations and provides information on how to file complaints. The Initiative has resulted in significant public outreach of the Arab, Muslim, Sikh and South Asian communities. Senior Division officials have held more than 50 meetings with leaders from these communities in venues ranging from Department of Justice offices to mosques, gurdwaras and other venues throughout the country.

Education

The Division actively participated in the celebrations of the 50th Anniversary of the *Brown v. Board of Education* decision in 2003 and 2004. The Civil Rights Division planned a series of events at the Department of Justice to commemorate this landmark decision. The Attorney General convened a program at the Department of Justice at which invited speakers provided insight regarding the decision as well as personal stories.

In addition, Assistant Attorney General Acosta and Deputy Assistant Attorney General Wan Kim both served on the 50th Anniversary Commission established by Congress. This Commission hosted a series of events over two years across the country to spotlight and celebrate the 50th Anniversary of the *Brown* decision, which was capped by a ceremony in May of 2004 in Topeka, Kansas, where President Bush participated. Topeka was the jurisdiction where *Brown* originated.

The Division also regularly contacts states and local school districts that are involved in our approximately 340 school desegregation cases to ensure that the promise of Brown is fulfilled.

Voting

The Division has devoted substantial resources to pre-election outreach, compliance and technical assistance under Section 203 of the Voting Rights Act. After the results of the 2000 census were announced in 2002, we wrote to each jurisdiction covered by Section 203 to appraise it of its obligations. Moreover, we personally contacted by phone each of the newly-covered jurisdictions. This massive outreach effort promoted substantial awareness of a previously unknown

obligation. As part of the continuing initiative to encourage voluntary compliance by covered jurisdictions, Assistant Attorney General Acosta mailed letters on August 31, 2004, to more than 400 Section 203 and 4(f)(4) covered jurisdictions reminding them again of their obligations under these statutes and offering assistance on how to achieve compliance.

We have also conducted an extensive outreach and educational campaign with regard to the provisions of Help America Vote Act (HAVA), particularly those that took effect on January 1, 2004. We wrote each chief state election official regarding HAVA's requirements. Then, when HAVA took effect, we widely publicized its newly effective provisions. Also during 2003 and 2004, Division personnel handled numerous inquiries, responding informally to many requests from states and organizations. Those responses are posted on our web site. Additionally, in early 2004, we sent informal advisories to six states raising specific concerns over their ability to comply with HAVA in time for their first elections for federal office in 2004. After the first round of federal primary elections in February and March 2004, we wrote to 3 states raising compliance concerns noted by monitors. Finally, we conducted a detailed state-by-state analysis of compliance with HAVA's statewide voter registration database requirements. This analysis has resulted in contact with several states regarding this issue and on-site visits to 3 states. We are now focusing on monitoring and assisting state and local efforts to implement requirements of HAVA that enter into effect on January 1, 2006.

Special Litigation

The Division's Special Litigation Section enforces statutes involving police departments and institutions run by state and local governments. The Assistant Attorney General and Section staff regularly participate in outreach events directed toward these audiences. For example, the Section Chief participated in the International Association of Chiefs of Police Civil Rights Committee meetings on a regular basis. Assistant Attorney General Acosta has attended and addressed a number of conferences held to address these issues. The Division has also regularly posted consent decrees, technical assistance letters, and investigative findings at http://www.usdoj.gov/crt/split/findsettle.htm and made them widely available to interested persons. The Division is also making efforts to publicize resolution of cases in Special Litigation matters. For example, on May 4, 2005, Assistant Attorney General Acosta, Governor Haley Barbour, and Mississippi Attorney General Jim Hood held a joint press conference in Jackson, Mississippi to announce the settlement of a lawsuit regarding conditions at two of the state's juvenile detention facilities. It is the Division's hope that settlements such as these will encourage additional settlements and deter violations.

Disability

One of the most technically detailed areas of the Division's responsibility are the disability requirements contained in the Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act. Because of the complex regulations involved in compliance with and enforcement of these statutes, the Division has devoted significant resources to public outreach and technical assistance to help to ensure compliance.

For example, we maintain the ADA.gov website which provides detailed technical information and received nearly 30 million "hits" last year. In addition, we operate an ADA hotline, which last year served more than 100,000 callers, 48,000 of whom were personally assisted by ADA specialists. In fact, the ADA.gov website is one of the Department's most-used websites.

The Division also published Guidance to assist with compliance. For example, in early 2004, as part of our preparation for the primary and general elections, we published a 33-page *ADA Checklist for Polling Places*, which walks local officials through the process of improving accessibility at polling places. We also published a guide to making emergency services accessible, *An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People*. We published a total of 9 new technical assistance documents during 2004 including *Project Civic Access Cities and Counties: First Steps Toward Solving Common ADA Problems*, and a video entitled *10 Small Business Mistakes* in addition to providing Spanish language translations of 12 such documents on the new Spanish section of the www.ada.gov website.

The Division is engaged in outreach efforts to the business community about disability issues. We hosted, during 2004, ADA Business Connection meetings in four cities: Houston, Seattle, Atlanta, and Washington, D.C. The Division also regularly publishes *Disability Rights On-Line News,* which is available at http://www.ada.gov/disabilitynews.htm. This publication highlights recent efforts of the Department of Justice and other items of interest to the disability community, and includes significant information about our housing accessibility efforts.

Housing

The Division is also involved in ongoing efforts to educate the public and various entities involved in the housing industry about their rights and responsibilities under the Fair Housing Act and related statutes. For example, in 2004, we issued a Joint Statement on Reasonable Accommodations with the Department of Housing and Urban Development. The joint statement provides technical assistance, in a series of questions and answers, regarding the rights and obligations of persons with disabilities and housing providers relating to

reasonable accommodations, and is available online at http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. The Division is also in the process of developing a Fair Housing Forum, a technical assistance program to bring builders, architects and others engaged in the construction trade together with Division attorneys and outside disability advocates. Similarly, Division managers regularly attend and make presentations at conferences, meetings and other gatherings that provide opportunities for disseminating information about our enforcement programs and compliance with the Fair Housing Act.

Summary

The items listed above are only selected examples. Our efforts to educate the public span the entire breadth of our jurisdiction. We continue to look for ways to expand them. The Civil Rights Division is proud of its efforts to educate the public about the nation's civil rights statutes. Our outreach efforts, combined with a strong enforcement record, indicate that the public is aware of the Division's services, the Division's enforcement efforts, and how to file complaints with the Division.

III. We've heard a lot about ownership society in the last few months. This is especially visible in the area of housing. What has the Division done to make housing more accessible?

President Bush speaks often about the imperative of developing an "ownership society." Indeed, economic independence is a key to securing the liberties that are the focus of the civil rights movement. A necessary prerequisite to this is the elimination of illegal barriers to housing based on race, sex, national origin, religion, and disability. This Division advances this mission on a number of fronts including enforcement litigation under the Fair Housing Act, the Equal Credit Opportunity Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act; non-litigation approaches such as mediation and settlements; and technical assistance and substantial outreach efforts to both protected individuals and covered entities.

Litigation

During this administration, the Civil Rights Division has initiated 165 new lawsuits and obtained 158 consent decrees in the areas of fair housing, fair lending, and public accommodations, including the first lawsuit under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Our efforts to ensure that illegal discrimination does not prevent people from obtaining housing fall primarily under the Fair Housing Act (FHA). Last year, for example, the Housing Section filed 43 lawsuits, including 24 pattern or practice cases, an 85 percent increase over the number of pattern and practice cases filed in 2003, and achieved an enforcement rate 9 percent higher than the average

number of filings over the previous 7 years. At the same time, we resolved through consent decrees 38 lawsuits, including 28 pattern or practice cases. These cases include allegations of discriminatory lending, rent discrimination, sexual harassment, discrimination on the basis of disability, and discrimination on the basis of religion.[1] A few examples underscore our efforts to secure the promise of the "ownership society".

In one case, we filed a lawsuit against the owners and managers of the Foster Apartments, in St. Bernard Parish, Louisiana, alleging discrimination against African-Americans who were seeking housing. Specifically, the defendants told black prospective applicants that they had no apartments available for rent while at the same time telling white applicants that apartments were available. And in February, in a case with disturbingly similar allegations, we filed a suit alleging that an apartment complex in Boaz, Alabama, discriminated against African-Americans by, among other things, falsely telling them that no apartments were available

Likewise, in May 2004, the court entered a Consent Decree in the *United States* v. *Habersham Properties Inc., et al.*, resolving our allegations of a pattern or practice of race discrimination against African-American prospective renters at the Crescent Court apartment complex in Decatur, Georgia. This case came to our attention based on a complaint from an African-American woman who was told that no apartments were available when she went to the complex in person, but was informed of availabilities when she called back on the telephone. We confirmed the discrimination through the Division's testing program. During the testing, the rental agent consistently allowed white testers to inspect available apartments and gave them the opportunity to rent, while falsely telling black testers that there were no apartments available for inspection or for rent. The consent decree in this case requires the defendants to: adopt non-discriminatory policies and procedures; provide training for employees on the requirements of the Fair Housing Act; submit to compliance testing, and maintain records and submit reports to the Division. The defendants paid a total of $180,000 in damages: $170,000 in damages for aggrieved persons (including the African-American woman who brought the case to our attention) and a $10,000 civil penalty.

We also went to trial in *United States* v. *Veal*. We alleged a pattern or practice of discrimination by the defendant landlords, who systematically sought sexual favors from female tenants. One of the victims was 19 years old and living in her car with her two children when she moved into the top floor of a duplex owned by the defendants. On two separate occasions, one defendant came to her house, let himself in unannounced, and forced her to have sex with him on her bed. After these incidences, she used the medicine she was receiving to treat her sickle cell

[1] The complaints and settlement documents for the cases discussed in the text can be found on the Housing Section's website at www.usdoj.gov/crt/housing.

disease to try to kill herself. Another victim was homeless and living in her car, separated from her children, when she rented a home from the Veals. After resisting several incidents where a defendant fondled her and refused to stop, the victim considered committing suicide to escape the harassment. In this case we secured a jury award of $1.1 million, the largest FHA award in the Division's history.

Our lawsuits have not only defended the rights of Americans to obtain rental housing, but also to purchase houses. During 2004, the Division filed and resolved two major cases under the Fair Housing Act and the Equal Credit Opportunity Act ("ECOA"). Our lawsuit against Old Kent Bank alleged that the bank violated the law by failing to provide either small business or residential lending services within city limits of the predominantly African-American City of Detroit. Pursuant to the May 2004 settlement agreement, the bank's successor will open three new branch offices, spend $200,000 for consumer education programs, and provide $3 million in Bank-subsidized loans to the redlined areas.

Our second case in this area was against First American Bank. We alleged that the bank violated the law by failing to provide residential, small business, or consumer lending services in predominantly African American and Hispanic neighborhoods in the Chicago and Kankakee metropolitan areas. This case resulted from the first referral ever to the Department by the Federal Reserve Board. Pursuant to the July 2004 consent order, First American Bank will open four new branch offices, spend $700,000 on outreach and consumer education programs, and provide $5 million in Bank-subsidized loans to qualified residents of the redlined areas.

This was the first time the Division has ever filed two such cases in the same year. These lawsuits represented firsts in another area as well; they were the Division's first two suits filed under the Fair Housing Act and ECOA that challenged lending practices not only for residential mortgage loans but also small business loans.

Last year, the Division successfully defended and enforced the Religious Land Use and Institutionalized Persons Act, or RLUIPA, which Congress passed in 2000. During 2004, we opened nine investigations, and successfully resolved three investigations where the jurisdiction opted to comply with the law without the need for formal action by the Division. Of particular note, this January the Division dismissed its complaint in *United States v. Maui Planning Commission*, our first contested RLUIPA matter, after the County agreed to issue to the religious community a previously denied construction permit. The Division also secured two significant appellate victories, cementing RLUIPA's constitutionality and reach. In *Midrash Sephardi v. Town of Surfside*, the Eleventh Circuit agreed with us first that RLUIPA constitutes a valid exercise of Congressional authority, and second that the statute was violated where religious assemblies are barred absolutely from a district where fraternal lodges such as Masonic temples are permitted to locate. In *Sts. Constantine and Helen v. New Berlin*, the Seventh

Circuit on February 1, 2005, held that a Wisconsin city violated RLUIPA by imposing unreasonable procedural requirements on a Greek Orthodox congregation seeking to build a church. The Civil Rights Division briefed and argued the case as *amicus*.

Settlements and Mediation

Since the beginning of 2004 we have filed 13 new cases and obtained 13 consent decrees involving violations of the Fair Housing Act's accessibility requirements for new, multi-family housing. Our six most recent consent decrees against private developers require retrofits to a total of 5,500 apartment units in 14 states; funds for payments to victims and fair housing organizations totaling nearly $2 million; and other relief, including training, advertising, and payments of civil penalties.

Of particular interest, the Division resolved two of the largest design and construction cases ever filed. In *United States v. Deer Run Management Co., Inc.*, we filed and resolved a design and construction suit under the FHA and the new construction requirements of the Americans with Disabilities Act. The consent decree, entered November 24, 2004, covers over 4,000 ground units and affects 34 apartment complexes in 6 states. The agreement also provides for a $1.2 million fund to compensate individuals who were injured by the inaccessible housing, and for a $30,000 civil penalty to the United States.

We also filed and resolved a suit against the Housing Authority of Baltimore City. This was the Division's first case ever brought against a public housing authority to enforce HUD's Rehabilitation Act regulations. The consent decree, now approved by the court, requires extensive program and policy changes, the provision of more than 800 heightened-accessible units, 2,000 new housing opportunities for individuals with disabilities, and $1,039,000 in damages. This suit is particularly significant in light of the Third Circuit Court of Appeals' decision in *Three Rivers Independent Living Center* v. *Housing Authority of the City of Pittsburgh*, which the Court concludes that private plaintiffs may not sue to enforce HUD's FHA guidelines.

We have made frequent use of alternative dispute resolution methods to resolve cases arising under the Fair Housing Act. In fact, of the twenty-four consent decrees obtained in the first seven months of FY 2005 (October 1, 2004 - April 30, 2005), two-thirds (sixteen) were arrived at with the aid of a third-party neutral -- a magistrate or senior judge or a private mediator.

Outreach and Technical Assistance

As noted in question II.B., *supra*, the Division is also involved in ongoing efforts to educate the public and various entities involved in the housing industry about their rights and responsibilities under the Fair Housing Act and related statutes.

For example, in 2004, we issued a Joint Statement on Reasonable Accommodations with the Department of Housing and Urban Development. The joint statement provides technical assistance, in a series of questions and answers, regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable accommodations, and is available online at http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. The Division is also in the process of developing a Fair Housing Forum, a technical assistance program to bring builders, architects and others engaged in the construction trade together with Division attorneys and outside disability advocates. Similarly, Division managers regularly attend and make presentations at conferences, meetings and other gatherings that provide opportunities for disseminating information about our enforcement programs and compliance with the Fair Housing Act.

Summary

The Civil Rights Division has been vigorous in enforcing and ensuring compliance with civil rights statutes that protect access to housing, credit, and land use. Through these actions, the Division is actively participating in implementing the President's ownership society agenda.

IV. A. What is the extent to which attacking racial preferences and other constitutionally-suspect classifications, as opposed to defending them, is a priority for the Division? Please provide examples of the Division's priorities based on its enforcement record.

The Department of Justice enforces the law on a race-neutral basis.

B. As you know, the proposed bill to reauthorize federal highway and transit programs, the Transportation Equity Act: A Legacy for Users (TEA-LU21), includes language maintaining the status quo provision permitting preferences based upon race, ethnicity, and sex. When these types of preferences were at issue before the U.S. Supreme Court in *Adarand Constructors* v. *Pena,* 515 U.S. 200 (1995), however, the Court held that racial classifications, even if authorized by Congress, "must serve a compelling governmental interest" and "be narrowly tailored to further that interest."

1. The Department has taken the position that it is defending the use of racial preferences in contracting because it is the job of the Department to enforce current law. Will the Administration be sending to Congress legislation that would change the law so that the Department would no longer be in the position of defending law it does not support?

It is the Department's obligation to defend acts of Congress so long as any reasonable argument is available to defend the statute.

The Administration's proposal for the reauthorization of surface transportation programs, transmitted to the Congress in May 2003, included the extension of the disadvantage business enterprise (DBE) provisions without change. The DBE provisions of the TEA-LU are consistent with the Administration's proposal.

C. H.R. 309 is legislation that would establish a separate government for a particular race of people called "Native Hawaiians." The impetus for the bill and the proposed creation of a "Native Hawaiian governing entity" was *Rice* v. *Cayetano*, which was decided by the United States Supreme Court on February 23, 2000. In *Rice*, the Supreme Court held that Hawaii's limitation on the right to vote -- to persons of Native-Hawaiian ancestry -- for trustees of a state agency that administers programs designed for the benefit of Native Hawaiians, was a clear violation of the Fifteenth Amendment to the United States Constitution, which prohibits the denial or abridgment of the right to vote on account of race. In so holding, the Court determined that *ancestry can be a proxy for race* and that it was such a proxy in the case of Native Hawaiians.

By creating a Native-Hawaiian, quasi-sovereign state, persons of the Native-Hawaiian race who become members of such a state can receive racial preferences - in the same manner as do Indians who are members of federally-recognized tribes - without fear of contravening the Fifteenth Amendment or the Equal Protection Clause of the Fourteenth Amendment, for that matter. But, as the Supreme Court stated in *Rice*, "[it is a matter of some dispute . . . whether Congress may treat the native Hawaiians as it does the Indian tribes." And if Congress is powerless to treat the Native-Hawaiian race in the same manner in which it treats Indian tribes, then the establishment of a quasi-sovereign state limited to persons of the Native-Hawaiian race would likely be in contravention of the Constitution.

1. Do you believe that Congress has authority to act to provide a Quasi-sovereign state for Native Hawaiians?

As the above question acknowledges, there is a substantial, unresolved constitutional question "whether Congress may treat the Native Hawaiians as it does the Indian tribes," *Rice* v. *Cayetano*, 528 U.S. 495, 518 (2000), and hence whether Congress may establish and recognize a Native Hawaiian governing entity, as H.R. 309 would do, remains unresolved.

2. Can Congress act to preserve the legacy programs without violating prohibitions against the use of race by the government without the compelling governmental interest necessary to pass muster under the strict scrutiny test used by the Supreme Court in such cases?

We cannot comment on a hypothetical. Without having the details of a specific proposal, this question cannot be resolved.

D. What is the Department's position on public employment advertisements that indicate a racial preference for candidates or that exclude applicants of all but specific races? For example, can you explain both the legal and policy justification for the Department's decisions to intervene in cases initiated by the Special Counsel for Religious Discrimination? Do decisions depend on whether an employer accepts public funds (like the Salvation Army)?

Title VII forbids discrimination in employment based on race, color, religion, sex, or national origin. In particular, Section 704 of Title VII specifically makes it illegal to list or advertise that a position is restricted based on any of these criteria. The Department of Justice aggressively enforces laws that forbid racial discrimination in employment practices.

Section 702 of Title VII further provides that Title VII prohibitions do not apply "to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." Section 703(e)(2) further provides that "it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion."

The Special Counsel for Religious Discrimination does not initiate cases. He serves as an advisor to the Assistant Attorney General on issues relating to religious discrimination. The Civil Rights Division has jurisdiction over religious discrimination in a variety of areas. The Division has jurisdiction to bring actions relating to religious discrimination under Title II (discrimination in public accommodations); Title III (discrimination in public facilities); Title IV (denial of equal educational opportunities); Title VII (discrimination in employment); Title IX (authorizing the Attorney General to intervene in cases involving denial of equal protection of the laws that are of general public importance) of the Civil Rights Act of 1964 and under the Fair Housing Act. The Division also has jurisdiction to bring cases under the Religious Land Use and Institutionalized

Persons Act (RLUIPA). In addition to litigation, the Division submits amicus briefs in cases that impact the statutes we enforce. As with all of the Division's cases, we exercise our litigating authority after careful deliberation and consideration of the purposes of the statutes we enforce, the public interest in civil rights enforcement, and issues of allocation of resources.

Finally the availability of Title VII's Section 702 exemption bears no relation to the acceptance or non-acceptance of government funds. That the Salvation Army has contracts under which it provides services to New York government entities in exchange for money, as referenced in the question, does not affect its right to invoke the protection of Section 702.

E. Is it the policy of the Department to prohibit the granting of funds for domestic violence programs directed toward male victims? If so, how does your Division reconcile this policy with our constitutional principles under the Fifth and Fourteenth Amendments wherein similarly situated persons are entitled to access to the same services and benefits without regard to race, color, religion, or sex?

The Civil Rights Division does not award such grants.

1. If you are not aware of this policy, what is your position and what action will your Division take to remedy this discriminatory policy?

The Department of Justice's Office on Violence Against Women (OVW) is leading the federal government's effort to end violence against women through the administration of federal grant programs aimed at improving the criminal justice system's response to crimes of violence made against women. OVW administers eleven discretionary grant programs and one formula grant program that are authorized by VAWA and related legislation. OVW administers its grant programs in accordance with the specific statutory eligibility and purpose requirements that Congress has established. Some of OVW's grant programs have gender-specific statutes, however some programs do not. For example, OVW's Violence Against Women STOP Formula Grant Program funding may only be directed to those entities whose focus is combating violence against women. 42 US.C. Section 3796gg(a) states that "[t]he purpose of this subchapter is to assist States, State and local courts (including juvenile courts), Indian tribal governments, tribal courts and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women." OVW has never construed this purpose area, or any other, as precluding services to males; similarly, OVW does not have a policy precluding grantees from serving males.

Sixty-three percent of grantees and subgrantees reported serving male victims. A total of 73,799 men (not including men served by Batterer Intervention Programs[1]) were served by STOP subgrantees in 2003 and another 10,506 men were served by discretionary grant programs from January 1-June 30, 2004. Approximately 12.5% of all victims receiving OVW funded services are men.

In addition to services for victims/survivors, two programs specifically serve children of victims/survivors of domestic violence: Safe Havens and Rural grants. These two programs served 4,484 male children (42% of all children served by these two programs).

F. At the hearing, Representative Watt inquired about the disparity in statistical reporting done by the Department and in a Syracuse University study. Can you explain the discrepancy?

The Transactional Records Access Clearinghouse (TRAC), which is affiliated with Syracuse University, released a study purporting to examine federal civil rights prosecutions, and concluding that the Division's criminal efforts are declining. CRT disagrees. In short, we believe their numbers are wrong. On April 19, 2005, Assistant Attorney General for Legislative Affairs William E. Moschella sent a letter to Chairman Chabot detailing the Division's criminal prosecutions over the past 6 years including a listing of each case to provide the subcommittee the raw data concerning the Division's achievements.

The TRAC report, for example, states that only 84 defendants were prosecuted last year compared to 159 in 1999. In fact, the Criminal Section, working with United States Attorneys' Offices around the country, prosecuted 125 defendants in FY 2003 and 138 defendants in FY 1999. This past fiscal year, the Division prosecuted 151 defendants, a significant increase from FY 1999. This record has been achieved despite a decrease in reports alleging civil rights abuses (for example, a decrease from 12,000 complaints per year in fiscal year 1999 to 9,500 per year since fiscal year 2002). Indeed, this past fiscal year, the Division, working with United States Attorneys' Offices, prosecuted a record number of cases, the most cases ever brought in a single year. The Division's numbers show that, far from suffering a steep decline, prosecutions have remained steady or increased at a modest rate.

V. Now that the Division has worked through a presidential election cycle since the implementation of the Help America Vote Act (HAVA), in your investigations and prosecutions of allegations of election-related impropriety, how has HAVA impacted your work?

Enforcement of the Help America Vote Act of 2002 ("HAVA") was one of the major initiatives of the Civil Rights Division leading up to the November 2004

[1] The number of people served by Batterer Intervention Programs are not reported by gender.

election. The Division began work immediately after passage of the new law in 2002 to ensure that everything possible was done to see that states were prepared to comply with the new requirements that became effective in 2004 by the time of the 2004 federal elections.

Title III of HAVA contains the uniform and nondiscriminatory election administration and technology requirements. A number of these Title III requirements took effect in elections for federal office beginning on January 1, 2004; namely, the requirements regarding provisional voting, identification for certain first time voters who register by mail, and the posting of voter information at polling places on the day of each federal election. In addition, HAVA required each state to set up by January 1, 2004, a computerized statewide voter registration database which contains the information for every registered voter in the state. However, HAVA permitted states to defer the effective date until January 1, 2006, on this provision and most did so.

The Department undertook a number of initiatives to increase awareness of HAVA and to ensure that States fully and timely complied. These measures have included:

- In March 2003, the Division sent a letter to the chief election official for each of the 55 states and territories covered by the Act, advising them of the requirements of Title III of HAVA and the Department's enforcement responsibilities.

- Prior to the January 1, 2004, effective date of HAVA, the Division assessed the status of each state's compliance with HAVA's requirements, each state's formal administrative plan, and any new rules or legislation.

- When HAVA took effect in January 2004, the Division held a press conference and issued detailed press releases describing the requirements of the new statute, in an effort to increase public understanding of the law.

- The Division sent warning letters or informal advisories to six states raising specific concerns regarding whether they would be in compliance with HAVA by the time of their first federal elections in 2004. These letters, along with follow-up visits to several states, helped spur these states to take the necessary actions to come into compliance.

- The Division crafted new forms for federal observers and DOJ monitors to use in the 2004 elections to help identify whether jurisdictions were complying with HAVA, and trained Division personnel on the new HAVA requirements.

- After the first round of federal primary elections in February and March, 2004, the Division sent warning letters to three states to raise specific

HAVA compliance issues that our observers and monitors had noted in their elections, and these letters likewise led to improved compliance by the States.

- The Division made outreach visits to two states to observe the status of compliance with the new statewide database provisions.

- The Division provided informal written guidance in response to numerous requests for our views on different aspects of HAVA from various states and organizations over the last two years.

- The Division posted significant information about HAVA on its website. This information included informal guidance responses, frequently asked questions, examples of new state voter registration forms developed to comply with HAVA, a compilation of relevant state and federal laws for states to use in developing their voter information posters under HAVA, information about how jurisdictions could obtain federal funds under HAVA from other federal agencies, as well as contact information for Division attorneys assigned to answer questions from the various states regarding HAVA.

- The Division attended and provided speakers to numerous conferences of election and other state officials on the subject of HAVA over the last two years.

- Since the EAC came into being, Division representatives have worked closely with the EAC Commissioners and their staff on various issues. By statute, a Division representative sits on the EAC Board of Advisors, and in that capacity reviews and comments on the guidance issued by the EAC to states.

- In May 2004, the Division filed its first enforcement lawsuit under HAVA against San Benito County, California, which was resolved by a consent decree. In January 2005, the Division filed a second HAVA lawsuit against Westchester County, New York, which was also resolved by consent decree. Prior to the November 2004 election, the Division participated in a number of cases in Michigan, Florida and Ohio, filing amicus briefs addressing HAVA's provisional balloting requirement as well as whether HAVA provides a private right of action.

Since the November 2004 election, the Division has been reviewing the progress of state compliance with those HAVA requirements that will come into effect in January 2006, such as the requirement for a statewide voter registration database. The Division is reviewing completed or ongoing efforts in each state to implement the database, both for those states that were required to meet the HAVA database requirements as of January 2004, and those states (the vast

majority) that must meet those requirements by January 2006. The Division also has engaged in extensive contact with state officials in two large states concerning their respective compliance efforts. Where we find clear non-compliance with HAVA's database and other requirements, we are prepared to take appropriate enforcement action.

Written questions submitted by Representative King:

VI.
A. What was your involvement in drafting and implementing E.O. 13166?

Executive Order 13166 was issued on August 11, 2000, before I was employed by the United States Government. I played no role in drafting EO 13166. On June 18, 2002, the Department of Justice issued its Limited English Proficiency (LEP) Recipient Guidance. As Principal Deputy Assistant Attorney General for the Civil Rights Division, I signed this Guidance on behalf of the Department. As Principal Deputy Assistant Attorney General and as Assistant Attorney General, I was further involved in the Department's EO 13166 implementation efforts, including defending the Executive Order in two court proceedings.

B. Who else was involved in the drafting and implementation of the Executive Order?

An Executive Order is a directive of the President directed to all members of the Executive Branch. Each federal agency covered by the Executive Order thus should be involved in implementation. The staff of the Coordination and Review Section plays a coordinating role in implementing the Executive Order within the Civil Rights Division. With respect to drafting, as I was not employed by the United States government at the time, I have no knowledge regarding who was involved in drafting EO 13166.

C. Were any organizations consulted who did not support E.O. 13166 or had doubts about the way the policy would function?

As I was not employed by the United States government at the time, I have no knowledge regarding who was involved in consultations or drafting of EO 13166.

D. Has the government enforced E.O. 13166? Please submit a complete list of all organizations or persons who have been contacted about possible violations of E.O. 13166, with an indication of any further contacts or enforcement activities.

Executive Order (EO) 13166 requires all agencies that provide federal financial assistance to issue guidance on how recipients of that assistance can take reasonable steps to provide meaningful access to limited English proficient (LEP) persons consistent with Title VI of the Civil Rights Act of 1964 and the Title VI

implementing regulations. The Executive Order itself cannot be enforced against recipients. Rather, federal funding agencies are responsible for the administrative enforcement of Title VI and the Title VI implementing regulations. Each agency is responsible for handling complaints of alleged discrimination by their recipients under the statute and regulations, and thus each agency, and not the Department, has knowledge of a complete list of organizations or persons who have been contacted about possible violations of Title VI and the Title VI implementing regulations. The Division does not have authority to investigate complaints filed with other agencies, and it does not maintain a list of such complaints or investigations.

The Division does investigate some complaints of discrimination against recipients of Department of Justice financial assistance. The Division operates under Memoranda of Understanding with the Office of Justice Programs and with the Criminal Division's Asset Forfeiture and Money Laundering Section (two of the largest funding components in DOJ) to investigate a portion of discrimination complaints filed against recipients of federal assistance from those offices. In this capacity, the Division is currently investigating complaints against 12 recipients of federal funds in which the complainant has alleged national origin discrimination due to a failure by the recipient to take reasonable steps to provide meaningful access for LEP individuals.

It is important to note that in the administrative investigative context, an open investigation does not reflect any determination as to the merits of the complaint. Rather, it simply means that the Division received a complaint and is investigating the matter in a fair and impartial manner, with the goal of working with the recipient to reach a productive and amicable resolution. For this reason, we do not identify the subjects of pending investigations.

E.O. 13166 also requires federal agencies to create and implement plans to take reasonable steps to provide meaningful access for LEP persons to their own federally-conducted programs and activities. Such activities include, for example, the administration of the social security system, federally-run emergency management activities, and Bureau of Indian Affairs-run schools. The Division periodically provides information and technical assistance to agencies regarding their obligations under this portion of the E.O. However, the Division's role with regard to the federally-conducted portion of the E.O. is primarily to serve as a repository for federal agency language access plans and to provide technical assistance where appropriate.

E. Which specific persons in the Department of Justice and in your division have authority to interpret, implement and enforce E.O. 13166?

As Assistant Attorney General, I have responsibility for the Division's actions with respect to E.O. 13166.

F. What is the cost to the American taxpayer for implementing E.O. 13166?

The Office of Management and Budget issued a report in March of 2002 on the costs and benefits of implementing E.O. 13166, entitled "Report to Congress: Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency", http://www.whitehouse.gov/omb/inforeg/lepfinal3-14.pdf (March 14, 2002). This report addresses the question more fully than I could here. I respectfully refer you to that report.

G. I understand from reading the memoranda explaining the Department's position on E.O. 13166 that there is no court decision that the Department can cite that supports its position equating language and national origin, and that its only legal support is its own memoranda. Have there been any court decisions since the promulgation of E.O. 13166 that expressly equate language and national origin, and have there been any that reject the equation?

As the Department's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 F.R. 41455 (June 18, 2002), states: "Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall 'on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity 'to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.' 42 U.S.C. 2000d-1. Department of Justice regulations promulgated pursuant to section 602 forbid recipients from 'utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.' 28 CFR 42.104(b)(2)."

"The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs."

"...Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ``Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.\3\ The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups--the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities--the Executive Order remains in force."

"\3\ The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 (``[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are `inspired by, at the service of, and inseparably intertwined with ' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations."

The Division is aware of one other case addressing this issue since E.O. 13166. In *Almendares* v. *Palmer*, 284 F.Supp.2d 799 (N.D. Ohio 2003), the district court denied the state defendant's motion for summary judgment, finding that facts could exist to sustain plaintiff's claim of intentional discrimination on the basis of national origin as a result of defendant's failure to provide language services under Title VI.