Before the
Committee on the Judiciary
United States Senate

Responses to Committee Questions Concerning
Oversight of the Civil Rights Division
November 16, 2006

Written Questions for Wan Kim
Submitted by Senator Patrick Leahy

General Enforcement Efforts

1**. Is it correct that the Civil Rights Division has failed to file a single Section 2 Voting Rights Act case during the first five years of the Bush Administration?**

Answer: No. The Civil Rights Division has filed the following Section 2 cases during this Administration:

U.S. v. Crockett County	**W.D. Tenn.**	**04/17/01**
U.S. v. Alamosa County	**D. Colo.**	**11/27/01**
U.S. v. Osceola County	**M.D. Fla.**	**06/28/02**
U.S. v. Berks County	**E.D. Pa.**	**02/25/03**
U.S. v. Brown (Noxubee County)	**S.D. Miss.**	**02/17/05**
U.S. v. Osceola County	**M.D. Fla.**	**07/18/05**
U.S. v. City of Boston	**D. Mass.**	**07/29/05**
U.S. v. Long County	**S.D. Ga.**	**02/08/06**
U.S. v. City of Euclid	**N.D. Ohio**	**07/10/06**
U.S. v. City of Port Chester	**S.D.N.Y.**	**12/15/06**

In addition, the Civil Rights Division successfully litigated two other Section 2 cases through appeal and currently is defending the constitutionality of Section 2 in one additional case.

Voter Suppression in 2006 Elections

2. The Associated Press indicates that homeless people from Philadelphia were recruited to hand out inaccurate sample ballots describing Republican Governor Robert L. Ehrlich Jr. and Senate candidate Michael S. Steele as Democrats at polling sites in Prince George's County, Maryland, a county with a substantial African-American population. The Associated Press also reported that these flyers were paid for by the GOP and the Ehrlich and Steele campaigns.

Your written response to questions from Senator Schumer stated that the Justice Department looked into the inaccurate fliers and concluded that "there is an insufficient legal basis to initiate a formal investigation." The Voting Rights Act, 42 U.S.C. § 1973i(d), specifically provides criminal penalties for making a false document with knowledge that the document contains false or fictitious information.

Given that the flyers misrepresented the party affiliation of Ehrlich and Steele, why is there insufficient basis to initiate a formal investigation into possible criminal violations of the Voting Rights Act? Please provide a thorough explanation for this decision, including whether career staff recommended an investigation and outline the role of political staff at the Department of Justice and the White House.

Answer: The Voting Rights Act, 42 U.S.C. § 1973i(d), made it a crime to make a false statement "on any matter *within the jurisdiction of an examiner or hearing officer.*" 42 U.S.C. § 1973i(d) (emphasis added). Federal examiners were a creation of the 1965 Voting Rights Act and had responsibility to independently register voters in jurisdictions where the voter registration process was not equally open to minority citizens. 42 U.S.C. § 1973e. A hearing officer could determine challenges to voters registered by federal examiners. 42 U.S.C. § 1973g.

Section 1973i(d) would be inapplicable to any election-related matter in Maryland in or about November 2006. First, as no federal examiner was ever appointed to serve within the State of Maryland, this section would not have applied to any situation in Maryland at any time. Second, pursuant to Congress's reauthorization of the Voting Rights Act prior to November 2006, the Voting Rights Act no longer authorizes federal examiners or hearing officers. *See* Section 3 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

3. Senator Kennedy and I sent the Attorney General a letter on October 20th requesting a federal investigation into the activities of Tan Nguyen, a Republican congressional candidate. In the weeks leading up to the November 7 elections, an individual from the Nguyen's campaign mailed a letter to thousands of registered Latino voters that was specifically designed to intimidate them and keep them from voting. The letter, written in Spanish, falsely stated that immigrants may not vote. The letter also declared that "there is no benefit to voting" in U.S. elections.

At the oversight hearing, you gave me your "assurances" that an investigation into the Orange County case was ongoing. **Has the Justice Department launched a federal criminal**

investigation into this matter? Please provide a description and status report on this investigation.

Answer: Upon learning of the Orange County mailing, the Division immediately initiated an investigation. In addition, the Division also dispatched Department personnel to monitor the polls in Orange County for the November 7, 2006, elections. The matter remains the subject of an ongoing investigation. As you are aware, we are not at liberty to discuss the details of any ongoing investigation.

4. The United States Attorney Manual 9-85.200 states that "[w]hen the offense involves voting and race is an issue, prosecutors should contact the Criminal Section of the Civil Rights Division." At the oversight hearing, however, you testified that the allegations of targeting and intimidating Latino voters in Pima County, Arizona were not under the jurisdiction of the Civil Rights Division. In a follow up letter, responding to Senator Schumer, you informed this Committee that this Arizona report of voter intimidation has been delegated to one attorney in the Criminal Division.

Who made the decision to refer the Pima County case to the Criminal Division, as opposed to the Criminal Section of the Civil Rights Division, and why?

Answer: The Criminal and Civil Rights Divisions work together cooperatively on investigations related to voting. At this time, both the Criminal Division and the Civil Rights Division have open investigations of the Pima County allegations. As these are ongoing investigations, we cannot comment further.

5. In your oversight hearing testimony, you indicated that 229 complaints about election procedures were made directly to the Voting Section on election day, November 7, 2006.

> **a. Please provide a description and status report of all election day and pre-election day complaints you are investigating in connection with the 2006 federal election.**
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> **Answer: In November 2006, the Department opened multiple phone lines in order to handle calls from citizens with election complaints, as well as an internet-based system for reporting problems. On or about November 7, 2006, the Voting Section received approximately 147 calls and 94 e-mail contacts through its website. These 241 election day contacts raised approximately 351 issues, as some contacts raised multiple issues.**
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> **On election day, we were able to resolve all issues raised by approximately 36 of the 241 election day contacts we received. Of the additional election day contacts, 6 simply provided comments and 7 individuals contacted us seeking only election-related information, such as where they should go to vote.**
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> **The information provided to us by approximately 150 of these election day contacts did not indicate a possible violation of any of the federal laws the Department**

enforces. For example, a number of voters called complaining about an isolated mechanical failure of an individual piece of voting equipment.

As a result of pre-election investigation and outreach, the Department assigned more than 800 federal observers and Department monitors to selected polling places across the country. Approximately 470 federal observers from the Office of Personnel Management and 358 Department of Justice staff monitored the general election in 69 jurisdictions in 22 states in areas that we determined warranted scrutiny in order to prevent and document possible violations of voting rights. Election monitoring, among other things, involved receiving numerous calls and contacts within the course of the site monitoring. Consistent with past practice, Department personnel addressed and documented potentially discriminatory practices regardless of whether they were the subject of a formal complaint.

After Election Day, we reviewed all complaints and determined which matters warranted additional action. We have since initiated new investigations of these matters or incorporated them into ongoing investigations in the relevant jurisdiction. Any comment on these current investigations would be inappropriate at this time.

b. Please provide a description and status report of all election day complaints or pre-election complaints involving the November 7, 2006 Election that the Criminal Division is investigating.

Answer: We are aware of at least 25 criminal matters that are currently under investigation around the country by the Criminal Division and various United States Attorneys' Offices. However, because Department procedures do not require United States Attorneys' Offices to consult with Headquarters before requesting a preliminary investigation of an election fraud allegation, the actual figure may be higher. As these criminal investigations are currently open, it would not be appropriate to comment on them.

6. During the November 7 general election, MALDEF attorneys witnessed anti-immigrant activists aggressively intimidating Latino voters in Tucson, Arizona. At least one of these activists wore dark clothing with a badge-like emblem and carried a handgun in a holster, giving the false impression that he was a law enforcement official. The men attempted to ask Latino voters questions, write down their personal information, and videotape them as they went to cast their vote. The *Arizona Republic* reported that Russell Dove, a local anti-immigrant activist, has proudly acknowledged his participation in this effort to intimidate Latino voters.

a. **Has the Justice Department launched a federal investigation into this matter? Please provide a detailed description and update of the Justice Department's federal investigation into this matter, including all Justice Department offices involved in responding to and investigating this incident.**

Answer: At this time both the Criminal Division and the Civil Rights Division have open investigations of the Pima County allegations. As these are ongoing investigations, we cannot comment further.

b. Reports from MALDEF observers on the ground indicate that no federal observers were present at the 49th precinct in Tucson, Arizona, an area with a heavy percentage of Latino voters. **Why were no federal observers sent to the 49th precinct despite reports from local residents that they were aware that this polling site had a history of intimidation against Latino voters?**

Answer: Pima County, in which Tucson is situated, has never been certified for federal observers, and thus there is no legal authority to assign such personnel to monitor the polls there. However, the Civil Rights Division did send personnel to Pima County on election day as part of its departmental monitoring efforts. The monitors in Pima County on election day were in contact with MALDEF concerning the situation. Because the Department has an ongoing investigation of this matter, it cannot comment further.

c. **Given the history of voter intimidation of Latino Americans, what steps will the Justice Department take in the next 12 months to ensure that voter intimidation based on race or immigration status will not occur in the next election?**

Answer: The Department will continue its vigorous enforcement of federal civil rights laws. This enforcement, particularly under Sections 2, 4(f)(4), 203, and 208 of the Voting Rights Act, protects Latino Americans and others subject to discrimination on the basis of race or membership in a language minority group. Since 2002, the Civil Rights Division has filed approximately three-fourths of all cases in the history of the Act to protect the right of voters needing assistance to vote and approximately 60 percent of all minority language cases in the entire previous history of the Voting Rights Act. As a result of these and other lawsuits, since 2002, the Department has brought a majority of all cases it ever has filed under the substantive provisions of the Voting Rights Act to protect voters of Hispanic and Asian descent, and the first cases ever filed to protect the voting rights of voters of Filipino, Haitian, and Vietnamese descent. During this time period, the Division has filed numerous successful Voting Rights Act lawsuits across the country, including lawsuits in the following states: Arizona, California, Florida, Georgia, Massachusetts, New York, Pennsylvania, Tennessee, Texas, and Washington. The Department also will continue its unprecedented and vigorous outreach to Latino community and advocacy organizations, as well as other groups representing language and other minority citizens. The Department also will continue its unprecedented and vigorous outreach to state and local election officials to advise them of the requirements of federal law and urge their voluntary compliance. Finally, the Department will continue its unprecedented and vigorous program of monitoring elections to protect the rights of all citizens.

7. On November 3, 2006, a cross-burning incident occurred in Grand Coteau, Louisiana, on the eve of a racially heated and hotly contested mayoral election. The five-foot cross was erected outside of the town hall's parking lot, placed in a wooden frame, doused with oil and lit on fire. Cross-burnings are a clear and unmistakable expression of racial animus and hatred.

Cross burnings have historically been used as a tool to intimidate African-American voters from freely exercising their right to vote. **Has the Justice Department launched a federal investigation into this case? Please provide a detailed description and update of the Justice Department's federal investigation into this matter.**

Answer: Yes. The Criminal Section is investigating the cross burning in Grand Coteau, Louisiana. We also note that the Voting Section dispatched federal observers to monitor the Grand Coteau polls for that election. Because the Department has an ongoing investigation of this matter, it cannot comment further.

Personnel Issues

8. Since 2001 to the present, what role has the Federalist Society played, what role have Federalist Society members played, and what role has Federalist Society membership played in the hiring of career lawyers in the Civil Rights Division of the Justice Department?

Answer: I am not aware of any outside organization that has played any official role in the hiring of career lawyers in the Civil Rights Division of the Justice Department. Some of the attorneys involved in the hiring process have been members of the Federalist Society – including me -- while others have not. During the hiring process, a candidate's stated membership in any group or organization is noted. We are well aware, however, that mere membership in any organization is hardly a reliable method for determining a candidate's legal skills or the personal qualities necessary to being an attorney in the Civil Rights Division.

9. The *Boston Globe* reports that since 2003 "seven hires in the [Voting Rights, Employment Litigation, and Appellate sections] are listed as members of the Republican National Lawyers Association, including two who volunteered for Bush-Chaney campaigns." Additionally, the *Boston Globe* reports that "several new hires worked for prominent conservatives, including former Whitewater prosecutor Kenneth Star, former attorney general Edwin Meese, Mississippi Senator Trent Lott, and Judge Charles Pickering."

Are you concerned that the hiring of such a high number of career lawyers with conservative credentials creates a perception that the Civil Rights Division is no longer a neutral law enforcer? What steps are being taken to alleviate these concerns?

Answer: No. Consistent with my years of service as a career prosecutor in the Department of Justice, I am committed to even-handed law enforcement.

10. You testified at the oversight hearing that you do not hire people based on ideological considerations but rather you hire "based on their talent, their excellence, and their commitment to the work that we do" at the Civil Rights Division. In contrast to the third criteria – commitment to the work of the Division – the July 23, 2006 *Boston Globe* reported that at the Civil Rights Division:

> Hires with traditional civil rights backgrounds – either civil rights litigators or members of civil rights groups – have plunged. Only 19 of the 45 lawyers hired since 2003 in [the Voting Rights, Employment Litigation, and Appellate sections] were experienced in civil rights law, and of those, nine gained their experience either by defending employers against discrimination lawsuits or by fighting against race-conscious policies.

a. **Are you concerned that hiring lawyers without any traditional civil rights background or hiring lawyers with experience in defending *against* discrimination suits may lessen the public confidence in the ability of the Civil Rights Division to vigorously enforce racial discrimination against African Americans?**

Answer: No. I served as a criminal defense attorney before being hired as an Assistant United States Attorney, as did many of my fellow federal prosecutors. I expect all of the attorneys hired by the Civil Rights Division to be able to vigorously enforce the federal laws prohibiting discrimination, including racial discrimination against African Americans. This is why we measure an applicant's talent, excellence, and commitment to the work of the Division. Moreover, we are not aware of the methodology used by the *Boston Globe* in reaching its conclusions.

b. **In the hiring of both Honors Program lawyers and lateral hires, please identify what factors you consider in assessing an applicant's demonstrated commitment to the work of the Civil Rights Division?**

Answer: Every applicant is unique and treated as such. In general, however, a number of factors may be considered in assessing an applicant's commitment to the work of the Division, including an applicant's reasons for wanting to work in the Division; understanding of the work and mission of the Division; personal background and interests; and demonstrated interest in and understanding of the laws enforced by the Division.

c. **Does working for organizations that conduct traditional civil rights enforcement constitute a demonstration of the work of the Civil Rights Division?**

Answer: Yes, prior employment experience with an organization that conducts traditional civil rights enforcement helps to demonstrate an applicant's commitment to the work of the Civil Rights Division. However, as stated in 10(b) above, every applicant is unique and treated as such. In general, as stated above, a number of factors may be considered in assessing an applicant's commitment to the work of

the Division, including an applicant's reasons for wanting to work in the Division; understanding of the work and mission of the Division; personal background and interests; and demonstrated interest in and understanding of the laws enforced by the Division.

11. You testified that the 2002 change in the Honors Program and lateral hiring process was done "to centralize the process for hiring," and to ensure the "participation of both political and career attorneys."

a. Given that the 2002 change in hiring policy was done to ensure more input – rather than less – in the hiring process, please describe the official policy of the Civil Rights Division with regard to the role of Section Chiefs in the lateral and Honors Program hiring process? If this policy varies among sections, please explain why the policy is allowed to vary?

Answer: I am not aware of a change in the hiring process for lateral attorneys in 2002. In any event, Section Chiefs play a central role in the hiring of attorneys through both the Honors Program and lateral hiring process, including active participation in interviewing both lateral and Honors Program applicants. I take very seriously the recommendations of Section Chiefs in all personnel matters.

b. Please (i) list the names and titles of the individuals currently responsible for operating the hiring of lawyers in the Honors Program, and (ii) explain in detail how the Honors Program operates? Please provide a step-by-step breakdown on the process from recruitment, to receipt of applications, to interviews, and to hires.

Answer: The Attorney General's Honors Program (HP) is one of the most prestigious and competitive hiring programs in the country. It is administered and promoted by the Office of Attorney Recruitment and Management (OARM). This is a career office with administrative oversight of all career attorneys within the Department. OARM manages the applications and conducts the initial screening process to make certain that all applicants are eligible for participation in the HP. Applicants are then referred to components (such as the Civil Rights Division) based on the applicant's stated preference. The applications are reviewed by each component, which typically includes the input of both career and political appointees, and which results in applicants being selected for interviews. Applicants are then interviewed by both career employees and political appointees and recommendations are made to the respective Assistant Attorney General. The attorneys most recently involved in the Honors Program hiring process within the Civil Rights Division included attorneys in the Office of the Assistant Attorney General, both career and political appointees, as well as nearly all of the Section Chiefs.

<u>Desegregation & Access to Education</u>

12. During your confirmation hearings, you testified that the landmark Supreme Court decision *Brown v. Board of Education*, which desegregated public educational facilities, was "settled law." This term, the Supreme Court will hear two cases from Louisville (*Meredith v. Jefferson County Public Schools*) and Seattle (*Parents Involved in Community Schools v. Seattle School District No. 1)* posing the question whether, in the absence of court-ordered desegregation, race can be considered in assigning students to public schools.

The Justice Department filed an amicus brief arguing that voluntary desegregation plans violate the Equal Protection Clause. **How does the Justice Department's position support (a) the 52 years of desegregation efforts by the Civil Rights Division; and (b) the ability of school districts to enforce the promise of *Brown*?**

Answer:

(a) The position taken by the United States in *Meredith v. Jefferson County Public Schools* and *Parents Involved in Community Schools v. Seattle School District No. 1* is fully consistent with our historical position that the use of race must satisfy constitutional standards. Copies of the United States' amicus briefs in both cases, which set forth fully its position in these cases, may be found at: http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0908.mer.ami.html (*Parents Involved*) and http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0915.mer.ami.html (*Meredith*).

(b) The briefs of the United States strongly reaffirm the *Brown v. Board of Education* ruling that the state's ultimate objective in crafting public school programs must be to "achieve a system of determining admission to the public schools on a nonracial basis." 349 U.S. 294, 300-01 (1955). The Department recognizes that school districts across the country have a strong interest in providing a high-quality education to all students, and supports their efforts to seek innovative, race-neutral solutions, including open enrollment plans, that will improve educational opportunities for all children.

Voting Cases

13. Joe Rich, the former head of the Voting Rights Section, submitted written testimony to this committee that the Justice Department's decision to request additional information in *Branch v. Smith* was overtly political. In that case, a pro-Republican plan was tentatively approved by a federal court as a backup in case a previously approved state court redistricting plan was approved by the Justice Department in a timely manner. The Voting Section extended the Section 5 review period by requesting additional information on a novel procedural issue. Because of the Justice Department's delay, the federal court ordered into effect the backup plan that favored the Republican Party.

> **Was the decision to delay reviewing the state plan one made by the Division without any evidence that such a request would aid in determining if the state plan had a potential negative impact on minority voters? Why or Why not?**

Answer: In December 2001 and early 2002, the Department received Mississippi's preclearance submission for a redistricting plan that was not drawn by the state legislature, but rather created by a state court. The plan was submitted for Section 5 review on December 26, 2001. The Department requested additional information on February 14, 2002. During the pendency of our review, the plan submitted for preclearance was enjoined by a three-judge federal court, which subsequently ordered a separate plan into effect.

On March 31, 2003, the United States Supreme Court unanimously ruled that the Department's request for additional information was appropriate. *Branch v. Smith*, 528 U.S. 254 (2003). The Mississippi Supreme Court later held that the state trial court did not have judicial power to devise the congressional redistricting plan that had been submitted for preclearance. *Mauldlin v. Branch*, 866 So. 2d 429 (2003).

14. In August 2005, the Justice Department precleared a Georgia law requiring voters to present government issued photo identification in order to vote at the polls on election day. On August 25, the Voting Section career lawyers prepared a memorandum recommending an objection that the Georgia law would harm minority voters. The next day, on August 26, the present Section Chief approved preclearance even though new information had just been received from the State and even though there was an additional 35 days before the September 30th deadline.

a. **Within the 24 hour period of the career lawyers submitting their recommendation and the section chief granting preclearance, was the negative recommendation of the career lawyers actually transmitted and communicated to Brad Schlozman, the acting Assistant Attorney General?**

Answer: It is my understanding that the Acting Assistant Attorney General was aware of the analysis of the career staff, including the views of the career Section Chief.

b. In your hearing testimony, you stated that your personal belief that the Justice Department could not prevent preclearance of an unconstitutional law. **What is the position of the Justice Department regarding whether the Voting Section can consider unconstitutionality in granting Section 5 preclearance? How does that official position comport with Congress's changes to Section 5 during the recent reauthorization of the Voting Rights Act?**

Answer: Consistent with the language of Section 5, the Attorney General's Section 5 procedures have long provided that the "preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of Section 5." 28 C.F.R. § 51.49. According to the U.S. Supreme Court, Section 5 itself provided that the Attorney General's decision not to object to a voting change did not "bar a subsequent action to enjoin enforcement" of such a change, 42 U.S.C. § 1973c, such as in "traditional constitutional litigation." *Morris v. Gressette*, 432 U.S. 491, 507 (1977). The Court further found in 1997 that Section 5 preclearance cannot be denied solely because

the voting change violates Section 2 of the Voting Rights Act. *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 485 (1997) ("*Bossier I*"). Under *Bossier I*, the Department can interpose an objection to a voting change only where the change resulted in a discriminatory retrogression in minority political opportunities. A change that violated other substantive statutory or constitutional provisions, but was not retrogressive, was entitled to preclearance.

After the decision in *Reno v. Bossier Parish School Board,* 528 U.S. 320 (2000) ("*Bossier II*"), and prior to the enactment of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("VRARA"), the inquiry turned solely on whether the voting change was retrogressive in purpose or effect. Under *Bossier II*, an objection could be interposed only under the "purpose" prong of Section 5 where the change was motivated by an intent to effect such a discriminatory retrogression. A change that was motivated by a discriminatory, but non-retrogressive purpose, would have been entitled to preclearance.

In enacting the VRARA, Congress found that the "effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft, which have misconstrued Congress' original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act." Public Law 109-246, Sec. 2(b)(6). Although no court has yet interpreted the provisions of the VRARA and the Department has not yet had occasion to take a position on them, legislative history suggests that the VRARA amended the Act to undo *Bossier II* by providing that the term "purpose" applies to "any discriminatory purpose." Accordingly, after reauthorization of the Act, under Section 5, it appears that the Attorney General may object to any voting change based on either a discriminatory purpose or effect. Congress did not express in this finding an intent to undo *Bossier I*.

After enactment of the VRARA, a challenge to the constitutionality of Section 5 of the Voting Rights Act was filed in the District Court for the District of Columbia, which the Division is currently defending.

15. Recent news reports have brought to light the degree to which the Civil Rights Division has cut career attorneys out of the decision-making process and disregarded their recommendations, driving away many veteran attorneys.

How will you ensure that political considerations do not trump enforcement of the Voting Rights Act?

Answer: Having served at the Department of Justice for more than a decade, I am always concerned with inaccurate perceptions that any of our decisions are not based solely on the facts and the applicable law. The Department is committed to the vigorous and even-handed enforcement of the Voting Rights Act on behalf of all

Americans and has brought lawsuits on behalf of African-American voters, Hispanic-American voters, Asian-American voters, Native-American voters, and white voters. This Administration also has brought the first lawsuits in history to protect the voting rights of citizens of Vietnamese, Filipino, and Haitian heritage.

Our record of even-handedly enforcing federal law best demonstrates that the Division makes litigation decisions that do not turn on partisan considerations. Career staff continues to be involved in the recommendation and decision-making process of every enforcement action brought by the Division under the Voting Rights Act, including the review of every Section 5 submission. Voting Section (and other Civil Rights Division) attorneys are in fact required to prepare detailed memoranda in enforcement actions, including Section 5 preclearance decisions, setting forth the facts and law on each proposed matter. Every legal analysis, including recommendations under Section 5, must be balanced and include all relevant information. When the decisions come to me as Assistant Attorney General for the Civil Rights Division, I also welcome opposing views and am available for responsible, productive discussion.

Having said that our record speaks best, let me remind you of that record. Voting Section attorneys have set a number of records in terms of litigation. During the period between the 2004 and 2006 general elections, the Department filed far more actions to protect voters against discrimination at the polls than in any time in its history. These lawsuits included key cases to (1) protect the rights of minority voters against race-based challenges to the eligibility of minority voters; (2) ensure appropriate treatment of minority voters; (3) prevent improperly influencing, coercing, or ignoring the ballot choices of minority voters; (4) ensure that voters, including minority voters, are provided with provisional ballots; (5) ensure that voters, including minority voters, are provided the assistance in voting that they are legally entitled to receive; (6) ensure that minority language voters are provided the bilingual assistance in voting that they need and are legally entitled to receive; and (7) ensure that localities provide voters, including minority voters, with the information Congress determined necessary in all polling places, including the posting of information on voters' rights. ***See, e.g., United States v. Long County*****;** ***United States v. City of Boston*****;** ***United States v. Hale County, TX; United States v. Brazos County, TX; United States v. City of Springfield, MA*****;** ***United States v. Westchester County, NY; United States v. City of Azusa, CA; United States v. City of Paramount, CA; United States v. City of Rosemead, CA; United States v. Ector County, TX; United States v. Cochise County, AZ; United States v. San Benito County, CA*****. These cases accelerated enforcement of the rights of voters to participate free from barriers at the polls during the 2002-2004 period.**

In fact, since my confirmation in November 2005, the Voting Section has been remarkably productive, with record-setting activity in many areas of enforcement. Since November 2005, the Voting Section has brought lawsuits under Sections 2, 4(f)(4), 5, 203, and 208 of the Voting Rights Act; the 1960 Civil Rights Act; the National Voter Registration Act; the Help America Vote Act; and the Uniformed

and Overseas Citizens Absentee Voting Act. The 18 new lawsuits we filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years.

During CY 2006, the Division's Voting Section has continued to aggressively enforce all provisions of the Voting Rights Act, filing nine lawsuits to enforce various provisions of the Act. These cases included a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic voters, at least three of whom were United States citizens on active duty with the United States Army, based entirely on their perceived race and ethnicity, and challenges to election systems that discriminate against African American voters in Euclid, Ohio, and Hispanic citizens of Port Chester, New York. We also recently won a major Section 2 lawsuit against Osceola County, Florida, overturning that county's discriminatory at-large election system. The Civil Rights Division also currently is defending the constitutionality of the VRARA.

In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history, and interposed important objections to protect minority voters in Texas and Georgia. With over 7,100 submissions, the Division handled roughly 40 percent more submissions in FY 2006 than in a normal year. The Voting Section also brought the first Section 5 enforcement action since 1998. The Voting Section also has begun a major enhancement of the Section 5 review process; jurisdictions will soon be able to submit voting changes online, making the process easier, more efficient, and more cost effective for covered jurisdictions and for the Department.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress this summer, remains strong. We filed five such lawsuits in 2006, which was only one short of the all-time record set in 2005.

The Division also had a record-breaking year with regard to enforcement of Section 208 of the Voting Rights Act. In FY 2006, the Division's Voting Section obtained 37.5%, or three out of eight, of the judgments ever obtained under Section 208 in its twenty-four year history.

In CY 2006, the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. We filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina. In addition, we reached a voluntary legislative solution without the need for litigation in South Carolina and worked with some additional states and localities to forestall or mitigate late ballot transmissions.

In CY 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We filed and successfully resolved lawsuits in Indiana, Maine, and New Jersey and are litigating a fourth suit filed in Missouri.

As of January 1, 2006, virtually all of HAVA's requirements became fully enforceable. In advance of this first year of nationwide implementation of the database and accessible voting machine requirements of HAVA and into this year, the Division worked hard to help states achieve timely voluntary compliance. Where that did not appear possible, the Division brought enforcement actions, filing five lawsuits under HAVA in 2006. Four suits were filed against states for failure to complete the database requirements of HAVA; two of those suits also were for violations of the accessible voting requirements. Moreover, one suit was filed against a locality for its failure to meet the election day informational posting requirements of HAVA. We also successfully defended three additional lawsuits challenging the congressional mandates of HAVA. In addition, in Pennsylvania, where a state court had enjoined compliance with HAVA, our formal notice to the state of our intended lawsuit assisted state officials in overturning an erroneous lower court decision, so that we did not ultimately need to file to ensure compliance in Pennsylvania.

During CY 2006, the Division also deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 states. In CY 2006, we sent over 1,500 federal personnel to monitor elections, double the number sent in CY 2000, a presidential election year.

16. A December 8, 2005 article in the *Dallas Morning News*, entitled "Voting Rights friction building inside Justice," reported that political appointees at the Justice Department have adopted a new policy barring career lawyers in the Voting Section from making recommendations in voting rights cases. At the oversight hearing, Senator Kennedy asked you a similar question and you responded "I do not believe so."

Now that you have had a time to look into this matter, please provide an answer to the following questions.

a. **Is it true that Voting Section lawyers, in reviewing preclearance requests, have been told to send their analysis memorandums forward minus the recommendations that have historically been part of the Section 5 preclearance process? If so, please explain in detail the motivation and justification for this change in policy.**

Answer: Career staff continue to be involved in the review and decision-making process of every Section 5 submission. As with every legal analysis, recommendations under Section 5 must be balanced and include all relevant information. It is my understanding that each person involved in the Section 5 analysis shares his or her assessment and recommendation with senior career management, and the ultimate recommendation of the Section is made with the full awareness of the views of each staff member involved in the matter. For those Section 5 recommendations that are forwarded to the Assistant Attorney General, *see* 28 CFR § 51.3, it is my understanding that I am informed whenever a difference of opinion may exist.

b. **Are you concerned that the public perception may be that the Section 5 preclearance process is merely a political judgment?**

Answer: Having worked at the Department of Justice for more than a decade, I am always concerned with inaccurate perceptions that any of our decisions are not based solely on the facts and the applicable law.

<u>Voting & Jurisdictional Divide</u>

17. In the oversight hearing, you testified that the Civil Rights Division does "not enforce any criminal statutes with respect to voting."

a. Under section 9-85.200 of the U.S. Attorney Manual, when a federal offense "involves voting and race is an issue, prosecutors should contact the Criminal Section of the Civil Rights Division." **How does your current position (that the Civil Rights Division does not enforce criminal violations with respect to voting) comport with the U.S. Attorney Manual's directive that cases involving voting and race should be directed to the Criminal Section of the Civil Rights Division?**

Answer: I appreciate the opportunity to clarify this issue. The vast majority of all voting rights related criminal investigations are assigned to, and handled by, the Criminal Division. However, a small percentage of voting related offenses are principally assigned to the Civil Rights Division to handle or supervise. The Civil Rights and Criminal Divisions cooperate in examining possible violations of federal voting laws. The determination of which office takes the lead in a case will, in the ordinary course, depend on the nature of the various allegations involved, the evidence available at the outset of a case (when initial assignment is made), the likely availability of additional evidence, the legal elements that need to be proved under relevant statutes, and the penalties available. For example, depending on the evidence developed, multiple criminal statutes may be implicated by the conduct. Subsequent investigation that materially alters the balance of factors may be a basis for reassignment of the investigation.

The Criminal Section's jurisdiction for voting and election matters is provided for in 28 C.F.R. §§ 0.50 and 0.55. Under the C.F.R., the Criminal Section handles voting or election matters involving the use of force or the threat of force, pursuant 18 U.S.C. § 245, when there is discrimination based on race, color, religion, or national origin. Misleading or deceptive conduct would not ordinarily constitute a use of force. Under 18 U.S.C. §§ 241 and 242, the Civil Rights Division also handles criminal voting or election matters that relate to discrimination based on race or color.

The Criminal Section is also responsible for investigating vote buying schemes that may be federally prosecuted under 18 U.S.C. § 594 and 42 U.S.C. §§ 1973i and 1973j that involve racial discrimination. Section 594 relates to intimidating voters

to vote for or against a candidate for national office. Section 1973i prohibits, in pertinent part and under certain conditions, a person from paying, offering to pay, or accepting payment for registering to vote or for voting. Section 1973j is available to prosecute racially discriminatory vote-buying schemes that involve election officials.

While the Criminal Division prosecutes the bulk of voting and election related matters, the Civil Rights Division has been involved in the prosecution of the following election-related cases:

- ***U.S. v. Salyer* (E.D. Ky. 1982);**
- ***U.S. v. Dorman*, (N.D. Miss. 1984);**
- **U.*S. v. Limehouse* (D.S.C. 1987); and**
- ***U.S. v. Rosario* (D.N.J. 2001).**

b. It is my understanding that the Civil Rights Division has exclusive jurisdiction to enforce the provisions of the Voting Rights Act (VRA). The VRA has two provisions, sections 11 and 12, 42 U.S.C. § 1973i and 1973j, that authorize criminal sanctions on those who, among other things, interfere with the right to vote. **Since the Civil Rights Division has exclusive jurisdiction over the Voting Rights Act, why does the Criminal Division prosecute violations of the criminal provisions of the Voting Rights Act?**

Answer: Pursuant to 28 C.F.R. § 0.55, the Criminal Division historically has been assigned to conduct, handle, or supervise enforcement of 18 U.S.C. §§ 241, 242, and 594 and 42 U.S.C. §§ 1973i and 1973j insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color.

<u>Employment Discrimination</u>

18. Recent cases show a troubling trend of the Civil Rights Division shifting course from positions advocated by the Justice Department in previous administrations.

In 1992, during the Administration of George H.W. Bush, the Justice Department filed suit against the New York City Board of Education alleging that custodian jobs were awarded within an "old boys" network in violation of Title VII. The suit was settled in 2000 by means of a court approved consent decree but litigation over the consent decree continued. In April 2003, the current Justice Department abruptly abandoned the claims of the female and minority custodians and refused to defend the settlement against a challenge from white male custodians to the seniority rights of female and minority custodians. In another case, the Civil Rights Division spent four years in litigation to overturn discriminatory hiring criteria used by the Southeastern Pennsylvania Transportation Authority. But in late 2001, on the very day an appellate brief in the case was due, the Department abruptly dropped the civil rights suit altogether.

In a case challenging the Buffalo Police Department, the Civil Rights Division assisted minority plaintiffs who alleged that they were systematically excluded from becoming police officers by means of a discriminatory employment test. As recently as June 2001 — in the early months of the Bush administration — the Justice Department opposed such tests. But one year later the Department adopted a completely different position and insisted that the same career lawyer who had worked for years opposing the tests take the opposite position in court.

How do you explain the Civil Rights Division's abrupt shift in position in the course of ongoing litigation? What do these shifts say about the Bush Civil Rights Division's commitment to equal opportunity for women and racial minorities in the workplace?

Answer: The Civil Rights Division is committed to vigorously enforcing Title VII and combating employment discrimination on behalf of all Americans. Since my confirmation as Assistant Attorney General, the Civil Rights Division has filed three lawsuits alleging a pattern or practice of employment discrimination, including two on behalf of African-American and Hispanic victims. In comparison, the Division filed one such case in FY 1998; one in FY 1999; and one in FY 2000.

Moreover, the Division filed four cases alleging a pattern or practice of employment discrimination in CY 2004, which is the largest number filed in a single year since the mid-1990s, as well as two in CY 2005. All of the pattern or practice complaints filed by the Department since 2004 have resulted in either a decision from the Court in favor of the United States or the entry of a consent decree implementing terms that were favorable to the United States.

We remain fully committed to the vigorous enforcement of federal law. Because various privileges attach to the Department's strategic decisions in ongoing or past litigation, further comment on specific cases would be inappropriate.

Written Questions for Wan Kim
Submitted by Senator Arlen Specter

1. In your testimony, you frequently cite statistics from the year 2006. What about the rest of the time the Bush Administration has been in office? Would you please provide us with the statistics on the Bush Administration's 5 or 6 year record at the Civil Rights Division?

Answer: The Civil Rights Division has achieved many successes during this Administration. Some of the highlights of this Administration's record in civil rights enforcement are:

During the past 6 years, the Civil Rights Division has litigated more cases on behalf of minority language voters than in all other years combined since 1975, when the minority language provisions were enacted. Specifically, we have successfully litigated almost 60 percent of all language minority cases in the history of the minority language provisions of the Voting Rights Act.

During the past six years, we have brought seven of the nine cases ever filed under Section 208 of the Voting Rights Act in the history of the Act, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

In the past six fiscal years (FY 2001 - 2006), as compared to the previous six years (FY 1995 - FY 2000), the Criminal Section filed 25% more color of law cases, charged 15% more defendants, and obtained the convictions of 50% more defendants.

In Fiscal Year 2004, we brought ninety-six criminal civil rights prosecutions, a record for cases filed in a single year.

From FY 2001 through FY 2006, the Division has brought 39 cross-burning prosecutions, charging a total of 60 defendants. The Division obtained the convictions of 58 defendants during that same period.

From FY 2001 to FY 2006, the Department prosecuted 360 human trafficking defendants, secured almost 240 convictions and guilty pleas, and opened nearly 650 new investigations. That represents a six-fold increase in the number of human trafficking cases filed in court, quadruple the number of defendants charged, and triple the number of defendants convicted in comparison to 1995-2000.

In recent years, the Division has teamed up with local prosecutors in an effort to prosecute historical Civil Rights era murders. On January 25, 2007, the federal district court in Jackson, Mississippi, unsealed an indictment charging James Seale, 71, with two counts of kidnapping resulting in death and one count of conspiracy in connection with the 1964 abductions and murders of 19-year-old African-Americans, Charles Moore and Henry Dee. Seale, a former member of the White Knights of the Ku Klux Klan, is charged with having acted in concert with fellow Klansmen to kidnap Moore and Dee, beat them, transport

them across state lines, and murder them by attaching heavy weights to them and throwing them, still alive, into the Old Mississippi River. If the defendant is convicted, he will face a maximum sentence of life imprisonment on each count.

We also assisted a Mississippi district attorney's office in reopening the investigation into the 1955 murder of Emmett Till, a 14 year-old African-American teenager, who was kidnapped and killed in rural Mississippi. We reported the results of that investigation to the District Attorney for Greenville, Mississippi, for consideration of whether to pursue state charges. A state grand jury in Mississippi declined to indict the case.

Also, in 2003, the Justice Department convicted Ernest Avants for the 1966 killing of Ben Chester White, an African-American sharecropper, on national forest land. White was murdered as part of a plot by white supremacists to lure Martin Luther King, Jr., to Mississippi so that they could assassinate him.

Since the January 2001 announcement of the President's New Freedom Initiative, the Division's Disability Rights Section has secured positive results for people with disabilities in over 2,000 actions under the Americans with Disabilities Act of 1990 ("ADA"), including lawsuits, settlement agreements, and successful mediations.

During the past 6 years, we have obtained more than 80% of the agreements reached under Project Civic Access since it began in 1999, improving the lives of more than 3 million Americans with disabilities.

We have authorized over 30 percent more investigations under the Civil Rights of Institutionalized Persons Act (CRIPA) in the past five and one-half years than in the previous comparable time frame.

With regard to juvenile justice facilities, this Administration has increased the number of settlement agreements by 60%, has more than doubled the number of investigations, and has more than doubled the number of findings letters issued.

We have worked to ensure the integrity of law enforcement by more than tripling the number of settlements negotiated with police departments across the country since 2001. From 2001 to 2006, we successfully resolved fourteen pattern or practice police misconduct investigations involving eleven law enforcement agencies, compared to only four investigations resolved by settlement during a comparable time period of the previous administration.

From 2001 to 2006, the Division filed more consent decrees (4 vs. 3) than in the preceding relevant time period. We have also issued more than six times the numbers of technical assistance letters to police departments (19 vs. 3).

In 2002, we established a Special Counsel for Religious Discrimination to coordinate the protection of religious liberties. We have won virtually every religious discrimination case in which we have been involved, and have increased the enforcement of religious liberties

in all areas of our jurisdiction. For example, we reviewed 82 cases of alleged religious discrimination in education from FY 2001 to FY 2006, resulting in 40 investigations. This is compared to one review and one investigation in the prior six-year period.

Under our post 9/11 backlash initiative, the Department has investigated over 750 incidents since 9/11 involving violence, threats, vandalism and arson against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin. We have obtained 32 federal convictions in such cases. We have also assisted local law enforcement in bringing more than 160 such criminal prosecutions.

During this Administration, we have used the Division's housing testing program in new ways. We have tested for the first time to detect discrimination against guide-dog users. We filed and settled the first case developed by the testing program that alleged that a retirement community discriminated against wheelchair users. In addition, we have tested for the first time to detect discrimination against certain minorities.

During this Administration, we have filed forty cases alleging that multi-family housing was not designed and constructed in compliance with the Fair Housing Act's requirements for accessible housing. Our settlements in FY 2005 alone created more than 12,000 new accessible housing opportunities.

2. During your confirmation hearing, Senator Cornyn asked you about your commitment to prosecuting human trafficking. You expressed a deep concern about this crime and noted that the current Administration and the Department of Justice has more than tripled the number of prosecutions associated with human trafficking. Can you discuss from where the resources to focus such an initiative have come (civil rights or criminal) and if this reallocation of resources has impacted the Civil Rights Division's ability to prosecute other, more traditional civil rights cases?

Answer: In the last six fiscal years, the Civil Rights Division has compiled an impressive record in prosecuting criminal civil rights cases, including the ninety-six criminal civil rights prosecutions brought in FY 2004, a record for cases filed in a single year. Indeed, even more recently in FY 2006, the Criminal Section set new records in several areas by charging 200 defendants with civil rights violations, obtaining convictions of 180 defendants, and obtaining an overall conviction rate of 98%, the highest such figures in the history of the Criminal Section.

In the past six fiscal years (FY 2001 - 2006), as compared to the previous six years (FY 1995 - FY 2000), the Criminal Section filed 25% more color of law cases (238 v. 190), charged 15% more defendants (400 v. 349), and obtained convictions of 50% more defendants (327 v. 219). In FY 2006 color of law matters, we filed forty-four cases (up from twenty-nine the previous year) and charged sixty-six defendants (compared to forty-five in the previous year).

Over the same time period (after the October 28, 2000, effective date of the Trafficking Victims Protection Act), the Division's human trafficking efforts resulted in initiating five-

fold the number of investigations (639 vs. 128), filing more than six times as many human trafficking cases (124 vs. 19), quadrupling the number of defendants charged (360 vs. 89), and tripling the number of defendants convicted (238 vs. 67).

From FY 2001 through FY 2006 we charged 11% more defendants with civil rights violations than defendants charged from FY 1995 through FY 2000 (965 vs. 870). Accordingly, the Section's increase in prosecutor staffing has resulted in increased prosecutions in its overall enforcement program.

Our criminal prosecutions span the full breadth of the Division's jurisdiction, and our prosecutors handle all types of cases within our jurisdiction. As we have increased our staff, so have we increased our investigation and prosecution efforts as demonstrated by the increased activity in our overall enforcement program.

3. During your confirmation hearing, you defended the Department of Justice's record regarding enforcement of the Voting Rights Act. Additionally, you pledged your untiring focus towards improving the litigation statistics for all the sections that would fall under your supervision, including the Voting Rights Section. At the time, however, you were unable, when asked by Senator Kennedy, to comment on exactly what you would do in that area. Now, you have been the Assistant U.S. Attorney for over one year and have overseen one major election. Please comment on what initiatives you have implemented in the Voting Rights Section and how these actions have improved the enforcement the Voting Rights Act.

Answer: Since my confirmation in November 2005, the Voting Section has been remarkably productive, with record-setting activity in many areas of enforcement. Since November 2005, the Voting Section has brought lawsuits under Sections 2, 4(f)(4), 5, 203, and 208 of the Voting Rights Act; the 1960 Civil Rights Act; the National Voter Registration Act; the Help America Vote Act; and the Uniformed and Overseas Citizens Absentee Voting Act. In fact, the 18 new lawsuits we have filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years.

During CY 2006, the Division's Voting Section has continued to aggressively enforce all provisions of the Voting Rights Act, filing nine lawsuits to enforce various provisions of the Act. These cases included a lawsuit under Section 2 against Long County, Georgia, for improper challenges to Hispanic voters, including at least three United States citizens on active duty with the United States Army, based entirely on their perceived race and ethnicity, and challenges to election systems that discriminate against African-American voters in Euclid, Ohio, and Hispanic citizens of Port Chester, New York. We also recently won a major Section 2 lawsuit against Osceola County, Florida, overturning that county's discriminatory at-large election system.

The Civil Rights Division also currently is defending the constitutionality of the VRARA.

In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history and interposed important objections to protect minority voters in Texas and

Georgia. With over 7,100 submissions, the Division handled roughly 40 percent more submissions in FY 2006 than in a normal year. The Voting Section also brought the first Section 5 enforcement action since 1998. And the Voting Section has begun a major enhancement of the Section 5 review; soon jurisdictions will be able to submit voting changes online, making the process easier, more efficient, and more cost effective for covered jurisdictions and for the Department.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress this summer, remains strong. We filed five such lawsuits in 2006, which was only one short of the all-time record set in 2005.

The Division also had a record-breaking year with regard to enforcement of Section 208 of the Voting Rights Act. In Fiscal Year 2006, the Division's Voting Section obtained 37.5%, or three out of eight, of the judgments ever obtained under Section 208 in its twenty-four year history.

In CY 2006, the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. We filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina. In addition, we reached a voluntary legislative solution without the need for litigation in South Carolina, and worked with some additional states and localities to forestall or mitigate late ballot transmissions.

In CY 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We filed and successfully resolved lawsuits in Indiana, Maine, and New Jersey, and are litigating a fourth suit, filed in Missouri.

As of January 1, 2006, virtually all of HAVA's requirements became fully enforceable. In advance of this first year of nationwide implementation of the database and accessible voting machine requirements of HAVA and into this year, the Division worked hard to help states achieve timely voluntary compliance. Where that did not appear possible, the Division brought enforcement actions, filing five lawsuits under HAVA in 2006. Four suits were filed against states for failure to complete the database requirements of HAVA; two of those suits also were for violations of the accessible voting requirements. In addition, one suit was filed against a locality for its failure to meet the election day informational posting requirements of HAVA. We also successfully defended three additional lawsuits challenging the congressional mandates of HAVA. In addition, in Pennsylvania, where a state court had enjoined compliance with HAVA, our formal notice to the state of our intended lawsuit assisted state officials in overturning an erroneous lower court decision, so that we did not ultimately need to file to ensure compliance in Pennsylvania.

During CY 2006, the Division also deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. On November 7, 2006, over 800 federal personnel monitored the polls in 69 political subdivisions in 22 states. In CY 2006, we sent over 1,500 federal personnel to monitor elections, double the number sent in CY 2000, a presidential election year.

I personally met with representatives of a number of civil rights organizations prior to the 2006 general election, including organizations that advocate on behalf of racial and language minorities, as well as groups that focus on rights for voters with disabilities. During these meetings, I encouraged the groups to share with us information about their concerns to help us respond appropriately where needed.

I also personally met with representatives from the National Association of Secretaries of State, the National Association of Attorneys General, and other representatives of state and local governments and election officials before the 2006 general election. This meeting provided a forum to discuss state and local officials' concerns and allowed us to provide information about the Division's election day plans.

4. During your confirmation hearing, Senator Durbin asked you to comment about the Civil Rights Divisions approval of the new Georgia State voting law requiring an ID, available to those without another form of State ID for a $20.00 fee. At the time, you responded that you were not part of the decision, nor had the opportunity to review the "thousands of pages" of factual submissions regarding the subject Now that you are supervise the Voting Rights section and certainly are more familiar with this subject, please comment on whether you support the Department of Justice's decision to approve the Georgia law.

Answer: In August 2005, the Department precleared a Georgia voter identification law, which itself amended an existing voter identification statute that had been precleared by the prior Administration. This preclearance decision followed a careful analysis that lasted several months and considered all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of state photo identification and driver's license cards and the views of minority legislators in Georgia (as well other current and former minority elected officials) . The data showed, among other things, that the number of people in Georgia who already possessed a valid photo identification greatly exceeded the total number of registered voters, and that there was no racial disparity in access to the identification cards. Indiana's voter identification law was upheld by the Seventh Circuit in *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007), in the face of allegations similar to those made against the Georgia law.

Since my tenure as Assistant Attorney General, the State of Georgia adopted, and the Department precleared, a new form of voter identification that would be available to voters for free at one or more locations in each of the 159 Georgia counties. I fully stand by that decision.

5. During your confirmation hearing, Senator Durbin raised the issue of prosecuting "reverse discrimination" cases, such as the Administration filing lawsuits under Section 2 of the Voting Rights Act on behalf of whites, but not African Americans and the Administration's filing of single pattern or practice employment discrimination cases on behalf of whites but not African Americans. You stated that you were not "well attuned to the facts of those sections…" Certainly by now you are. Can you please explain why the Administration's Civil Rights Division is filing lawsuits on behalf of whites and not African Americans?

Answer: The Division has been active in enforcing the federal civil rights laws on behalf of all Americans, including African Americans. Indeed, during this Administration, the Division has filed scores of cases on behalf of African-American victims. Some examples are:

- **In July 2006, the Division filed a complaint against the City of Euclid, Ohio, alleging that the mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens in violation of Section 2 of the Voting Rights Act. In its investigation, the Division found that while African-Americans composed nearly 30% of Euclid's electorate, and although there had been eight recent African-American candidacies for the city council, not a single African-American candidate had ever been elected to that body. Further, the Division found that in seven recent city council elections, white voters voted sufficiently as a bloc to defeat the African-American voters' candidates of choice.**

- **In 2002, the Division filed a lawsuit under Section 208 of the Voting Rights Act that was the first ever to protect the voting rights of Haitian Americans.**

- **In November 2006, the Division filed a complaint against Tallahassee Community College (TCC) alleging that TCC failed to select an African American applicant for the position of HomeSafenet Trainer because of the applicant's race in violation of Title VII. Under a court-approved consent decree entered on November 7, 2006, TCC agreed to offer the applicant $34,363 in back pay and accumulated interest.**

- **In July 2006, the Division filed suit against the City of Chesapeake, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination on the basis of race and national origin in violation of Section 707 of Title VII of the Civil Rights Act of 1964 by using a mathematics test to screen applicants for entry-level police officer positions in a manner that had an unlawful disparate impact against African-American and Hispanic applicants.**

- **In July 2006, the court entered a consent decree resolving our suit against the City of Virginia Beach, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination in violation of Title VII through its use of a mathematics test that disproportionately excluded African-American and Hispanic applicants for the position of entry-level police officer. The decree alters the City's method for selecting entry-level police officers in a way that will eliminate the disparate impact of the mathematics test. In addition, the decree requires the City to provide remedial relief, including money damages, priority job offers, and retroactive seniority, to identifiable African-American and Hispanic victims of the challenged test.**

- **In 2003, the Division successfully settled a racial discrimination and retaliation lawsuit against the city of Fort Lauderdale, Florida. The lawsuit alleged that the city of Fort Lauderdale violated Title VII by denying an African-American employee promotion because of his race. The lawsuit further alleged that the city retaliated against the**

employee when he complained that he had been denied promotion for discriminatory reasons.

- **In October and November 2006, defendants Joseph Kuzlik and David Frederic y pled guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial couple in an attempt to force them out of their Ohio home. Fredericy was sentenced to 33 months in prison, and Kuzlik was sentenced to 27 months in prison.**

- **In August 2006, the Division obtained a verdict against a former apartment manager for discrimination on the basis of race as a result of his refusal to rent to African-Americans in Boaz, Alabama. The Division conducted an investigation of the manager and his employer through the use of fair housing testers. The defendant was ordered to pay a civil penalty of $10,000. Earlier in the year, the defendant's employer agreed to pay a civil penalty of $17,000 and compensatory damages of $32,700 to individuals who were subjected to the alleged discriminatory housing practices.**

- **In December 2005, the Division filed a complaint alleging that a Wisconsin nightclub violated Title II by discriminating against African-Americans. According to our complaint, nightclub employees falsely told African-Americans they could not enter because a private party was underway or the club was full to capacity, while at the same time admitting whites. On December 29, 2006, the court approved a consent decree settling the case and requiring the nightclub to adopt new entry procedures designed to prevent racial discrimination, to pay for periodic testing to assure that discrimination does not continue, to post a prominent sign at the entries advising that the nightclub does not discriminate on the basis of race or color, to train its managers, to send periodic reports to the Department, and to adopt an objective dress code approved by the Department.**

- **In 2004, the Division entered into a consent decree resolving allegations that Cracker Barrel Old Country Store, Inc., a nationwide family restaurant chain, accommodated a severe and pervasive pattern of racial discrimination at its restaurants, including allowing its servers to refuse to serve African-American customers and treating such customers differently in terms of seating, service, and responsiveness to complaints. Cracker Barrel agreed to implement far-reaching policy changes and training programs to remedy these violations.**

- **Since 2001, the Division has obtained four consent decrees involving redlining of predominantly African-American neighborhoods by major banking institutions. The first, filed and resolved in 2002, involved a major bank in Chicago that will invest more than $10 million and open two new branches in minority neighborhoods to settle a lawsuit alleging that it had engaged in mortgage redlining on the basis of race and national origin. In May 2004, the Division obtained a consent decree requiring a bank to invest $3.2 million in small business and residential loan programs and to open three new branches in the City of Detroit. This was the first redlining case the Division has**

ever brought alleging discrimination in business lending. In July 2004, the Justice Department filed and resolved a lawsuit against another bank in Chicago. The suit alleged that the bank intentionally avoided serving the credit needs of residents and small businesses located in minority neighborhoods. The bank has agreed to invest $5.7 million and open new branches in these neighborhoods. On October 13, 2006, the Justice Department filed a complaint alleging that Centier Bank discriminated on the basis of race and national origin by refusing to provide its lending services to residents of minority neighborhoods in the Gary, Indiana, metropolitan area in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The suit was resolved by a consent decree entered on October 16, 2006, which requires the Bank to: invest a minimum of $3.5 million in a special financing program for residential and CRA small business loans; commit at least $375,000 in targeted advertising; invest $500,00 to provide credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses of African-American and Hispanic areas and sponsor programs offered by community or governmental organizations engaged in fair lending work; open or acquire at least two full service offices within designated African-American neighborhoods; expand an existing supermarket branch in a majority Hispanic neighborhood to provide full lending services; provide the same services offered at its majority white suburban locations to all branches regardless of their location; train employees on the requirements of the Fair Housing Act and Equal Credit Opportunity Act; as well as other remedial relief.

- **On January 25, 2007, the federal district court in Jackson, Mississippi, unsealed an indictment charging James Seale, 71, with two counts of kidnapping resulting in death and one count of conspiracy in connection with the 1964 abductions and murders of 19-year-old African-Americans, Charles Moore and Henry Dee. Seale, a former member of the White Knights of the Ku Klux Klan, is charged with having acted in concert with fellow Klansmen to kidnap Moore and Dee, beat them, transport them across state lines, and murder them by attaching heavy weights to them and throwing them, still alive, into the Old Mississippi River. If the defendant is convicted, he will face a maximum sentence of life imprisonment on each count.**

- **In 2004, the Division announced that federal assistance would be provided to local officials conducting a renewed investigation into the 1955 murder of Emmett Till, a 14-year old African-American boy from Chicago. Till was brutally murdered while visiting relatives in Mississippi after he purportedly whistled at a white woman. Two defendants were acquitted in state court four weeks after the murder. Subsequent to the trial, the defendants admitted their guilt. Both men are now deceased. The investigation showed that there was no federal jurisdiction. Thus, on March 16, 2006, the Justice Department reported the results of its investigation to the district attorney for Greenville, Mississippi, for her consideration. A state grand jury in Mississippi declined to indict the case.**

- **In April 2004, five white supremacists pleaded guilty to assaulting two African-American men who were dining with two white women in a Denny's restaurant in**

Springfield, Missouri. One of the victims was stabbed and suffered serious injuries. The defendants were sentenced to terms of incarceration ranging from 24 to 51 months.

- **In February 2003, the Division successfully prosecuted Ernest Henry Avants for the 1966 murder of Ben Chester White, an elderly African-American farm worker in Mississippi who, because of his race and efforts to bring the Reverend Martin Luther King, Jr., to the area, was lured into a national forest and shot multiple times. That conviction was affirmed in April 2004.**

- **For example, in September 2006, two defendants were convicted of conspiring to interfere with the housing rights of a family that included an African American by burning a cross in front of their house. In April 2006, an additional defendant pleaded guilty to the same offense. In a separate case, a defendant pleaded guilty on August 16, 2006, to intimidating and interfering with an African-American family that was negotiating for the purchase of a house by burning a cross on the property adjacent to the house. On April 13, 2004, a defendant in a different case pleaded guilty to building and burning a cross in the front yard of an African-American couple's home; that defendant was sentenced to 18 months of incarceration.**

- **In a case stemming from a series of racially-motivated threats aimed at an African-American family in North Carolina, four adults were convicted and one juvenile was adjudicated delinquent. Two of the adults were convicted at trial for conspiring to interfere with the family's housing rights and, on July 5, 2005, were sentenced to 21 months in prison. A third defendant pleaded guilty to a civil rights conspiracy charge, and the fourth defendant pleaded guilty to obstruction of justice for his role in the offense.**

- **On March 4, 2004, in a case personally argued by the then-Assistant Attorney General for the Civil Rights Division, the United States Court of Appeals for the Fourth Circuit agreed with the Division that the district court should have imposed a stiffer sentence on the perpetrator of a cross burning in Gastonia, North Carolina. On March 28, 2005, the defendant was re-sentenced by another district court judge to one year and one day in prison.**

The Department is committed to enforcing the federal civil rights laws on behalf of all Americans. As the Jackson, Mississippi, Clarion-Ledger editorialized on January 31, 2007, "Discrimination is discrimination – and it's wrong in whatever color it comes. That's the law."

6. In your written responses from questions submitted as part of your confirmation hearing, I asked you about your perception of a breakdown in communication between the career attorneys and the political appointees in the Civil Rights Division. You stated that you have a history of fostering a positive dialogue in sections under your supervision and you intended spread this environment throughout the Division. Can you comment on how you have accomplished this and if, in your opinion, reduced the tension between career attorneys and political appointees?

Answer: My goal is to create an environment of hard work, mutual respect, open dialogue and professionalism. Having been a career attorney at the Justice Department for most of my professional life, I am sensitive to, and appreciative of, the concerns of career attorneys. Since taking office as Assistant Attorney General, I have worked hard to ensure open access and open lines of communications and to foster a positive relationship between political appointees and career attorneys. To that end, I have made myself and my Deputy Assistant Attorneys General available to career attorneys to hear their concerns. I have established regular meetings with the Division's Section Chiefs, and my deputies meet regularly with career attorneys in the sections under their supervision. Additionally, I created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns. Through these efforts, I believe I have fostered a positive dialogue between career attorneys and political appointees in the Division.

7. As stated during your confirmation hearing, your hiring recommendations have been and will continue to be based solely on the strength of an applicant's qualifications and that the recommendations of other career attorneys you have recommended to be hired. Can you attest that this is still your hiring policy? Additionally, can you comment on why others may have a perception that career employees have little or no input in hiring?

Answer: Yes. Career employees continue to play a central role in hiring attorneys to work in the Civil Rights Division, and I cannot speculate as to why some may have an erroneous perception of this process.

8. During your conformation hearing, you vowed work hard to improve the morale of all employees at the Civil Rights Division. Can you cite examples of how you have tried to achieve this and what impact is has had on the employees of the Division?

Answer: It is very important to me that the employees at the Civil Rights Division enjoy their work. As a personal matter, I have always greatly enjoyed working for the Justice Department; it is why I have spent more than a decade here. Working as a Justice Department attorney is a unique and rewarding career, and I hope that every attorney shares my level of enthusiasm. As a management matter, I believe that there is a connection between morale and productivity. I have worked hard to foster a positive relationship with the attorneys in the Division. I have made myself and my Deputy Assistant Attorneys General available to career attorneys to hear their concerns. I recently created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns. During my first week as Assistant Attorney General, I crafted the Division's Professional Development Office, which ensures that the Division's staff, particularly its attorneys, are afforded every opportunity to improve their professional development. The office has devised a week-long orientation program for new Division attorneys and supervises the new attorney mentor program. Its most recent success was a 3-day civil rights seminar for attorneys held at the Department's National Advocacy Center. I believe that these efforts have helped foster a positive work environment at the Division.

9. Please discuss your policy of inclusion of career attorneys that you promised in your response to Senator Durbin's Questions for the Record. Has part of this policy also been an "open door" to career attorneys to express their opinions and concerns?

Answer: Since taking office as Assistant Attorney General, I have maintained a policy of inclusion. I have always believed that a wide variety of opinions and input is necessary to make an informed decision. To that end, my Deputy Assistant Attorneys General and I regularly meet with and seek the advice of career attorneys, and we make ourselves available to hear their concerns. I hold regular meetings with the Section Chiefs, and my deputies meet regularly with the career management of the sections under their supervision. I routinely rely upon the advice of career management, and I try to manage the career attorneys in a respectful and cooperative manner, such as listening to their legal arguments, making timely decisions and providing clear guidance. Early in my tenure as Assistant Attorney General, I also created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns.

10. Please discuss what efforts the Justice Department is taking to implement the elements of the Carter-Baker Commission pertaining to investigations of voter fraud (section 5). Do you agree with the Commission's recommendations? What concerns do you have with their suggestions? Are there any requests you have of this committee for assistance in implementing these recommendations?

Answer: The Commission's recommendations primarily involve suggested changes in federal and state law. The Department will enforce or defend such federal laws within our jurisdiction as enacted by Congress.

11. The 2005 report of the Carter-Baker Commission to reestablish the public faith in our electoral process offers a number of recommendations, including issuing standardized ID cards to prevent voter fraud and requiring computerized voting machines to issue paper receipts to ease auditing efforts. Have you had a chance to review the recommendations of the report, and if so, could you comment as to the practicability and efficacy of these recommendations?

Answer: We have reviewed the recommendations but are not in a position to comment regarding their practicability or efficacy. Of course, the Department will enforce or defend such federal laws within our jurisdiction as enacted by Congress.

Written Questions for Wan Kim
Submitted by Senator Edward M. Kennedy

Voting Rights Enforcement

1. I wrote you a letter dated November 1, 2006 about the Civil Rights Division's plans for the November 7th midterm elections. My letter noted that the Division had filed only one lawsuit alleging discrimination against African-American voters since 2001. The Department's written response of November 9th refers to two Section 5 enforcement actions on behalf of African-American voters – one in Georgia, the other in Texas – and lawsuits under other provisions of the Voting Rights Act on behalf of African Americans in Tennessee, Florida, South Carolina, Texas, and Ohio. The identity of these suits is unclear from the letter.

a. In 2001, the Bush Justice Department inherited two voting rights lawsuits from the Clinton Administration that alleged discrimination against African-American voters in Crockett County, Tennessee and Charleston County, South Carolina. The Crockett County matter was investigated and approved for filing during the Clinton Administration, but negotiations delayed resolution of the case until a few months into the Bush Administration. The Clinton Administration approved and filed the Charleston County case, which was litigated during the Bush presidency. Are the Crockett County and Charleston County cases the cases referred to in the Department's November 9th letter in Tennessee and South Carolina?

Answer: The Section 2 case in Crockett County, Tennessee, was filed on April 17, 2001, and fully litigated during this Administration. The Section 2 case in Charleston County, South Carolina, was filed on January 17, 2001; it was fully litigated for almost four years during this Administration, not only through the trial court, but also on appeals that went to the U.S. Supreme Court. These cases are referenced in the November 9, 2006, letter.

b. After the 2000 election, the Department sued Miami-Dade County for not permitting language assistance Haitian-American voters with limited proficiency in English. The suit involved access to language assistance under Section 208 of the Voting Rights Act, not race discrimination. Is this the Florida suit on behalf of African-American voters mentioned in the Department's November 9th letter?

Answer: Section 208 protects the rights of voters to have assistance in casting a ballot, thereby allowing those voters to effectuate their right to vote. Violations of Section 208 against African Americans involve serious discrimination. This important case is one that was referenced in the November 9, 2006, letter.

c. What's the non-Section 5 enforcement action in Texas on behalf of African-American voters claimed in the Department's November 9th letter?

Answer: I appreciate the opportunity to clarify this issue. Our letter, dated November 9, 2006, referred to "two enforcement actions under Section 5 of the Voting Rights Act on behalf of African Americans, in Georgia and Texas, and other Voting Rights Act cases on behalf of African American voters in Tennessee, Florida, South Carolina, Texas, and Ohio." The language "two enforcement actions" actually refers to Section 5 *objections* interposed in CY 2006 to block racially discriminatory voting changes on behalf of African-American voters in Georgia and Texas. The language "other Voting Rights Act cases" refers, among other things, to a *lawsuit* the Division filed in Texas in CY 2006 under Section 5 of the Voting Rights Act to vindicate the rights of African-American and other minority voters.

In reality, the Bush Administration did not file a race discrimination lawsuit on behalf of African-American voters until it sued Euclid, Ohio in July 2006 under Section 2 of the Voting Rights Act. That lawsuit came only after numerous press reports about the Department's failure to enforce the voting rights of African Americans and after multiple attempts to schedule this oversight hearing.

d. When did the Department begin its investigation of Euclid, Ohio's method of electing its city council? When did Voting Section personnel first begin contacting the minority community contacts and requesting election returns to determine whether Euclid's method of election violated the Voting Rights Act?

Answer: The Department began to investigate the City of Euclid, Ohio, soon after learning of a potential violation of the Voting Rights Act. On March 20, 2006, the Department sent the City formal notice of our intent to file suit and an invitation to negotiate a settlement of the case that could be filed simultaneously with the complaint. The Department filed suit on July 10, 2006, after negotiation efforts proved futile.

e. Other than against Euclid, Ohio, is the Department actively investigating or pursuing claims of vote dilution involving African-American voters under Section 2 of the Voting Rights Act?

Answer: The Department is committed to the vigorous and even-handed enforcement of the Voting Rights Act and regularly investigates possible violations of Section 2 on behalf of all Americans, including African-American voters.

2. Although the Administration has failed to enforce the voting rights of African Americans, it did file the Department's first-ever lawsuit alleging voting discrimination by African Americans against white voters in a county in Mississippi in 2005.

a. Is it the Department's position that voting discrimination is more prevalent against white voters than African-American voters?

Answer: The Department is committed to the vigorous and even-handed enforcement of the Voting Rights Act on behalf of all Americans and has brought lawsuits on behalf of African-American voters, Hispanic-American voters, Asian-American voters, Native-American voters, and white voters. This Administration also has brought the first lawsuits in history to protect the voting rights of citizens of Vietnamese, Filipino, and Haitian heritage.

b. Does the Department have any active investigations into voter intimidation or coercion against African Americans in Mississippi or elsewhere, as possible violations of Section 11(b) of the Voting Rights Act?

Answer: Yes.

3. I'm troubled that the Civil Rights Division seems to be playing politics with its enforcement of the Voting Rights Act. Under Section 5 of the Act, the Justice Department has overruled the recommendations of career attorneys and pre-cleared voting changes that improved the election prospects of the Republican Party, but compromised the ability of minority voters to participate in the political process.

The Division pre-cleared the 2003 Texas redistricting plan, even though the career staff who investigated the plan unanimously concluded it would discriminate against minority voters. This summer, in *LULAC v. Perry,* the Supreme Court ruled that the Texas redistricting plan discriminated against Latino voters and violated the Voting Rights Act by redistricting Latinos out of a district just as they were about to elect a candidate of their choice.

a. If Latino voters went from being on the verge of electing a candidate of their choice to not having that opportunity, how could the Department conclude that Latino voters were not left worse off by the redistricting plan, in violation of the Section 5 standard?

Answer: In 2003, the Department conducted a deliberate and careful review of every relevant fact relating to the Texas submission of its congressional redistricting under Section 5 of the Voting Rights Act, concluding that there was no retrogression in the overall plan. The legislature offset one lost opportunity district for Latino voters by creating a new district in that region in which Hispanic voters dependably would be able to elect a representative of their own choice. Indeed, the plan was used during the 2004 elections, which resulted in an increase in the number of minority representatives elected to Congress from Texas.

In *LULAC v. Perry*, the Supreme Court agreed with the Department's principal argument that the state did not violate Section 2 by redrawing former congressional district 24. The Court also found no violation of the Constitution or the Voting Rights Act in 31 of Texas's 32 congressional districts. The Court's decision left the Texas redistricting plan largely intact and left it to the state to determine how to remedy the lone problem identified as to congressional district 23. In this regard, the Supreme Court reversed the decision of the lower court, which found no

violation in the redistricting plan, including district 23. Moreover, the Supreme Court's 5-4 decision produced six separate opinions from six different Justices in 120 pages of discussion.

The Supreme Court's decision in no way calls into question the Department's decision to preclear the Texas redistricting plan under Section 5 of the Voting Rights Act. Indeed, only one Justice suggested that Section 5 had been violated; no other Justice joined him in that portion of his opinion. The majority's decision as to district 23 was founded on a new principle, under Section 2 of the Voting Rights Act, that the creation of an offsetting majority-minority district may not remedy the loss of a majority-minority district in the same part of the state, if the new district is not compact enough to preserve communities of interest. Indeed, this new compactness inquiry issue was not the subject of briefing and was not addressed by the Department.

During the oversight hearing, you testified about the Department's preclearance of two voter photo identification laws in Georgia. <u>After</u> the Department precleared the laws, courts struck down the first law as the equivalent of a 21^{st} century poll tax because of the cost of obtaining the ID. They blocked the state's second attempt because it imposed an unconstitutional burden on the right to vote.

b. You explained that whether a voting law is unconstitutional is immaterial to the Section 5 determination. But an unconstitutional voting law that diminishes the opportunity of African-American voters to participate in the political process and elect candidates of their choice is retrogressive and warrants a Section 5 objection. I find it hard to understand how the Department concluded that a poll tax was not retrogressive, especially when a significantly greater percentage of African-American voters compared to white Georgians live below the poverty line, and a far lower percentage of African Americans have access to a motor vehicle and transportation to obtain a photo ID. Whether minority legislators supported the law was a factor the Department was required to consider under Section 5, and Georgia's African-American state legislators overwhelmingly opposed the photo ID laws.

Answer: In August 2005, the Department precleared a Georgia voter identification law, which itself amended an existing voter identification statute that had been precleared by the prior Administration. This preclearance decision followed a careful analysis that lasted several months and considered all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of state photo identification and driver's license cards and the views of minority legislators in Georgia (as well other current and former minority elected officials). The data showed, among other things, that the number of people in Georgia who already possessed a valid photo identification greatly exceeded the total number of registered voters, and that there was no racial disparity in access to the identification cards. The state subsequently adopted, and the Department precleared in April 2006, a new form of voter identification that would be available to voters for free at one or more locations in each of the 159 Georgia counties.

In *Common Cause/Georgia v. Billups*, the district court did not conclude that the identification requirement violated the Voting Rights Act. To the contrary, the court refused to issue a preliminary injunction on that ground. The court instead issued a preliminary injunction on constitutional grounds that the Department cannot lawfully consider in conducting a preclearance review under Section 5 of the Voting Rights Act. Accordingly, the court's preliminary ruling, in a matter that is still being actively litigated, does not call into question the Department's preclearance decision. In addition, the state court decision blocking Georgia's implementation of the identification requirement was issued on state constitutional grounds, and, therefore, also did not call into question the Department's preclearance decision. Indiana's voter identification law was upheld by the Seventh Circuit in *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007), in the face of allegations similar to those made against the Georgia law.

c. You defended pre-clearance of the first photo ID law in part by stating that it was based upon a statistical analysis and the absence of evidence of a disparity between the number of photo IDs issued by the state to African-Americans compared to whites. It has been reported that on the same day the Department pre-cleared Georgia's first voter photo ID law, the Department received new data from Georgia correcting earlier data on driver's licenses and photo IDs issued in the state. Wasn't the corrected data relevant to the Department's Section 5 determination? Did the Department consider the corrected data before concluding the law was not retrogressive? Was the statistical analysis you testified about based on data from the state?

Answer: It is my understanding that all data, including the last data set referenced in your question, were considered and supported the preclearance decision. The data on the number of persons with qualifying identification issued by the Georgia Department of Motor Services were provided by the State of Georgia. Population estimate data were obtained from the Census Bureau.

d. Since 2001, has the Department opposed Section 5 preclearance of any statewide voting change (either submitted to the Attorney General through the administrative process or presented to the District Court for the District of Columbia in a declaratory judgment action) that was enacted by a state legislative body controlled by Republicans?

Answer: The Department does not track party control of governmental units such as state legislatures, county boards, or city councils, as such information is irrelevant to Section 5 consideration. Please find attached a list of all Section 5 objections since 2001.

4. Last December, the *Washington Post* reported that the chief of the Division's Voting Section had modified the longstanding procedures for reviewing Section 5 submissions by instructing career staff <u>not</u> to include recommendations when analyzing Section 5 submissions. This change coincided with the Department's controversial decision to approve the Georgia photo ID law for voting and followed in the wake of the approval of the Texas redistricting plan.

Removing experienced career staff from the decision-making process would seem to compromise enforcement and suggests a political motivation -- there is no paper trail if the recommendation of career staff differs from the final decision of political appointees.

a. When I asked you about this policy change during the oversight hearing, you responded that every memorandum that you receive from the sections of the Division includes a recommendation. What I'm interested in knowing is whether the career attorneys and analysts in the Voting Section were ever instructed by section management not to include a recommendation in memoranda analyzing Section 5 submissions. I'm asking about career attorneys' memoranda to section managers, not memoranda from the section managers to you. Was this ever the policy of the Voting Section?

b. Please describe any oral communication in which special litigation counsel, deputy chiefs, or the chief of the Voting Section announced to the Voting Section staff a change or modification in the form or content of Section 5 analyses, including whether or not to include recommendations with those analyses, between January 2005 and the present. Please also provide any written communication, whether by memoranda or electronic mail, in which special litigation counsel, deputy chiefs, or the chief of the Voting Section announced to the Voting Section staff a change or modification in the form or content of Section 5 analyses, including whether or not to include recommendations with those analyses, between January 2005 and the present.

c. If this was section policy, have career staff resumed including recommendations with their Section 5 analysis?

d. Will you instruct management in the Voting Section that it's in the best interests of voting rights enforcement for career staff to make Section 5 recommendations?

Answer (a-d): Career staff continue to be involved in the review and decision-making process of every Section 5 submission. We are not aware of any communication announcing a change in policy of career staff involvement in Section 5 analysis. As with every legal analysis, recommendations under Section 5 must be balanced and include all relevant information. It is my understanding that each person involved in the Section 5 analysis shares his or her assessment and recommendation with senior career management, and the ultimate recommendation of the Section is made with the full awareness of the views of each staff member involved in the matter. For those Section 5 recommendations that are forwarded to the Assistant Attorney General, see 28 CFR § 51.3, it is my understanding that I am informed whenever a difference of opinion may exist.

5. The career attorneys in the Voting Section who conducted the investigation of the Texas redistricting plan and the first Georgia photo ID law had recommended that the Division object to the proposed changes. They were overruled by political appointees, but later court decisions vindicated the recommendations of the career attorneys.
Given the experience of the career attorneys in enforcing the Voting Rights Act, why were they overruled in the Texas and Georgia preclearance decisions?

Answer: In 2003, the Department conducted a deliberate and careful review of every relevant fact relating to the Texas submission of its congressional redistricting under Section 5 of the Voting Rights Act, concluding that there was no retrogression in the overall plan. The legislature offset one lost opportunity district for Latino voters by creating a new district in that region in which Hispanic voters dependably would be able to elect a representative of their own choice. Indeed, the plan was used during the 2004 elections, and resulted in an increase in the number of minority representatives elected to Congress from Texas.

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6. There were reports of voter deception and intimidation from around the country again in this election. Threatening letters targeted Latino voters in Orange County, California. There were misleading phone calls in Virginia, deceptive fliers in Maryland, and blatant anti-immigrant intimidation of voters at the polls in Tucson, Arizona.

a. Voter intimidation and deception are proven methods of disenfranchising minority voters. What did the Department do in advance of the recent elections to anticipate and deter such tactics?

Answer: Prior to the 2006 elections, Voting Section personnel reached out to representatives of minority advocacy groups and community organizations to explain the requirements of federal law and our interest in learning of problems affecting minority voters, and to encourage the gathering and communication of information about actual or potential violations of the Voting Rights Act or other federal election laws.

The Voting Section also reached out repeatedly over the past two years, as it traditionally does, to state and local election officials to alert them of their obligations under federal election laws, and to advise them of specific steps to avoid violations of federal law. In addition to numerous meetings and telephone calls with state and local officials across the United States, the Division has met with and addressed elections officials through appearances at meetings of elections officials organizations, such as the National Association of Secretaries of State, the National Association of State Election Directors, the National Association of County Officials, and the Election Center, and at conferences of local election officials in a number of states, including, but not limited to, California, Colorado, Connecticut, and Texas. In addition, written communications have been sent to state elections officials collectively and, when appropriate, individually.

Ultimately, the Department speaks most forcefully though litigation. During the period between the 2004 and 2006 general elections, the Department filed far more actions to protect voters against discrimination at the polls than in any time in its history. These lawsuits included key cases to (1) protect the rights of minority voters against race-based challenges to the eligibility of minority voters; (2) ensure appropriate treatment of minority voters; (3) prevent improperly influencing, coercing or ignoring the ballot choices of minority voters; (4) ensure that voters,

including minority voters, are provided with provisional ballots; (5) ensure that voters, including minority voters, are provided the assistance in voting that they are legally entitled to receive; (6) ensure that minority language voters are provided the bilingual assistance in voting that they need and are legally entitled to receive; and (7) ensure that localities provide voters, including minority voters, with the information Congress determined necessary in all polling places, including the posting of information on voters' rights. *See, e.g., United States v. Long County*; *United States v. City of Boston*; *United States v. Hale County, Texas; United States v. Brazos County, Texas; United States v. City of Springfield, Massachusetts*; *United States v. Westchester County, New York; United States v. City of Azusa, California; United States v. City of Paramount, California; United States v. City of Rosemead, California; United States v. Ector County, Texas; United States v. Cochise County, Arizona; United States v. San Benito County, California.* These cases accelerated enforcement of the rights of voters to participate free from barriers at the polls during the 2002-2004 period.

In addition, in 2006, the Department took a strong proactive approach to potential election day problems and issues. Rather than simply respond to complaints, the Voting Section attempted to identify locations where problems were likely to occur and to pre-position personnel to document and address such issues as arise on election day. As a result of this extensive pre-election investigation and outreach, on election day the Department assigned more than 800 federal observers and Department monitors – a record number for a mid-term election – to selected polling places in 69 jurisdictions in 22 states across the country.

b. Anti-immigrant sentiment has been fueled by political campaigns exploiting the immigration reform issue. Given unsubstantiated allegations by anti-immigrant groups of widespread voting by illegal immigrants, what did the Department do to prevent harassment of Latino voters at the polls?

Answer: Much of the activity described above has been focused on protecting the rights of Latino citizens. Indeed, over 86 percent of all cases filed by the Voting Section to protect Latino voters under the language minority provisions of the Voting Rights Act have been filed in this Administration. In fact, a majority of all cases to protect Latino voters ever filed by the Department under the substantive provisions of the Voting Rights Act have been filed in this Administration, including approximately 87 percent of all cases to protect Latino voters under the voter assistance provisions of Section 208. Our election monitoring includes considerable focus on discriminatory challenges to voters, and our Section 2 lawsuit in Long County, Georgia, specifically involved race-based challenges to Latino voters.

As described above, the Division has been inclusive in its outreach, attention, and activity to enforce the voting rights of all language minority citizens. This Administration has been the first in history to file lawsuits to protect the voting rights of citizens of Vietnamese, Filipino, and Haitian heritage.

7. During the oversight hearing, you stated that the Civil Rights Division "do[es] not enforce any criminal statutes with respect to voting." In response to Senator Schumer's question about deceptive fliers distributed in African-American communities in Maryland, you said you believed that the Criminal Division was investigating the matter, but you weren't sure. Your position on the division between the jurisdiction of the Civil Rights Division and Criminal Division is inconsistent with the handbook authored by attorneys in the Criminal Division's Public Integrity Section, entitled "Federal Prosecution of Election Offenses." According to the handbook, the Civil Rights Division supervises prosecutions involving voting discrimination on the basis of race or ethnic background. The facts in Maryland make clear that the deceptive fliers were targeted to mislead African-American voters in the exercise of their right to vote – the fliers were distributed in African-American communities and displayed photographs of prominent African-American leaders with false information about their voting preferences.

a. Were you incorrect when you testified at the hearing that the Civil Rights Division does not enforce any criminal statutes with respect to voting?

Answer: I appreciate the opportunity to clarify this issue. The vast majority of all voting rights related criminal investigations are assigned to, and handled by, the Criminal Division. However, a small percentage of voting related offenses are principally assigned to the Civil Rights Division to handle or supervise. The Civil Rights and Criminal Divisions cooperate in examining possible violations of federal voting laws. The determination of which office takes the lead in a case will, in the ordinary course, depend on the nature of the various allegations involved, the evidence available at the outset of a case (when initial assignment is made), the likely availability of additional evidence, the legal elements that need to be proved under relevant statutes, and the penalties available. For example, depending on the evidence developed, multiple criminal statutes may be implicated by the conduct. Subsequent investigation that materially alters the balance of factors may be a basis for reassignment of the investigation.

The Criminal Section's jurisdiction for voting and election matters is provided for in 28 C.F.R. §§ 0.50 and 0.55. Under the C.F.R., the Criminal Section handles voting or election matters involving the use of force or the threat of force, pursuant 18 U.S.C. § 245, when there is discrimination based on race, color, religion, or national origin. Misleading or deceptive conduct would not ordinarily constitute a use of force. Under 18 U.S.C. §§ 241 and 242, the Civil Rights Division also handles criminal voting or election matters that relate to discrimination based on race or color.

The Criminal Section is also responsible for investigating vote buying schemes that may be federally prosecuted under 18 U.S.C. § 594 and 42 U.S.C. §§ 1973i and 1973j that involve racial discrimination. Section 594 relates to intimidating voters to vote for or against a candidate for national office. Section 1973i prohibits, in pertinent part and under certain conditions, a person from paying, offering to pay, or accepting payment for registering to vote or for voting. Section 1973j is available

to prosecute racially discriminatory vote-buying schemes that involve election officials.

While the Criminal Division prosecutes the bulk of voting and election related matters, the Civil Rights Division has been involved in the prosecution of the following election-related cases:

- ***U.S. v. Salyer* (E.D. Ky. 1982);**
- ***U.S. v. Dorman*, (N.D. Miss. 1984);**
- ***U.S. v. Limehouse* (D.S.C. 1987); and**
- ***U.S. v. Rosario* (D.N.J. 2001).**

b. Do you agree that where race discrimination is alleged, lawyers in the Civil Rights Division should take the lead because of their experience and sensitivity in matters of race discrimination and their familiarity with the affected communities?

Answer: The vast majority of all voting rights-related criminal matters are handled by the Criminal Division. However, a small percentage of voting related criminal matters are handled by the Civil Rights Division, including those that involve discrimination or intimidation on grounds of race or color. *See* 28 C.F.R. §§ 0.50 and 0.55. The office taking the lead in any particular case will, in the ordinary course, depend on the nature and scope of the various allegations involved, the evidence available at the outset of a case (when initial assignment is made), the likely availability of additional evidence, the legal elements that need to be proved under relevant statutes, and the penalties available. Depending on the evidence developed, multiple criminal statutes may be implicated.

The Civil Rights and Criminal Divisions coordinate and cooperate in examining possible violations of federal voting laws. In October 2002, the Department established a Ballot Access and Voting Integrity Initiative to deter discrimination and election fraud, ensure access to the polls, and better coordinate prosecution of election offenses and violations of voting rights. As part of this Initiative, the two Divisions established an annual joint conference in coordination with the U.S. Attorneys to train departmental attorneys who handle voting matters on an ongoing basis and establish better communications among the Civil Rights Division, the Criminal Division, and the District Election Officers of the U.S. Attorneys' Offices. As a result, the communication and coordination in such cases have significantly improved in the past few years. We will continue to explore means of improving our enforcement of the federal voting laws.

8. To clear up confusion about where responsibility lies in the Department to investigate and prosecute conduct designed to mislead, threaten, or intimidate voters, please respond to the following:

a. Over what types of election-day and pre-election day schemes to discourage voter participation does the Voting Section have jurisdiction? Under what circumstances would Section 2 of the Voting Rights Act apply? Under what circumstances would Section 11(b) apply?

Answer: Section 2 has broad application to any voting qualification, prerequisite to voting, or voting standard, practice, or procedure administered by a state or political subdivision. Two recent cases illustrate the applicability of Section 2 to election day schemes to discourage voter participation. In *U.S. v. Long County, Georgia*, the Voting Section filed suit in 2006 alleging that the county challenged the eligibility of Hispanic citizens to vote based solely on their race and ethnicity. On February 10, 2006, the district court entered a consent decree that required defendants to train their election officials and poll workers on federal law, to maintain uniform procedures for responding to voter challenges, and to notify Hispanic voters who were challenged that no evidence was presented to support the challenges against them and that they are free to vote in future elections. In *U.S. v. City of Boston, Massachusetts,* the Voting Section filed suit in 2005 alleging that the city had subjected Hispanic, Chinese, and Vietnamese citizens to disparate and discriminatory practices, including denial of necessary assistance and denial of an opportunity to cast provisional ballots. The action also alleged that poll workers and others coerced, improperly influenced, or simply ignored voters' ballot choices, and subjected voters to other poor treatment. On October 18, 2005, the district court issued an Order adopting the Memorandum of Agreement and Settlement agreed to between the City of Boston and the Department, which, among other things, requires the City of Boston to increase existing training of all election poll workers on the legal requirements of the Voting Rights Act and other election laws.

Section 11(b) applies to actual or attempted voter intimidation, threats, or coercion, and applies to "any person" rather than only to governments. The Division has brought only three lawsuits, all involving non-governmental defendants, under Section 11(b) in its entire history. The only relief available under Section 11(b) is declaratory and injunctive relief to bar similar future misconduct. Where the misconduct falls within the responsibility of local election officials to prevent, claims cognizable under Section 11(b) can also be included as a count in a broader complaint, such as a Section 2 claim, where full relief can be obtained through other means. *See, e.g., United States v. City of Boston*.

b. Under what circumstances would the Criminal Section bear primary responsibility for the prosecution of an election crime?

c. Please identify the statutes that the Criminal Section enforces that address crimes affecting voting.

Answer (b-c): Please see the response to question 7(a) above.

d. How many investigations of voting-related crimes has the Criminal Section opened since 2001? How many has the Criminal Section prosecuted?

Answer: The Criminal Section has opened seven investigations of voting-related crimes since 2001. Prior to that time, the Criminal Section had not opened an investigation of a voting-related crime since 1995. Please also see our response to question 7(a) above.

e. Does the Criminal Section have any active election-related investigations? Is the Criminal Section investigating reports of a cross-burning in Grand Coteau, Louisiana alleged to have been intended to intimidate African-American voters on the eve of a hotly-contested mayoral election between an African-American candidate and a white candidate?

Answer: Yes. The Criminal Section is investigating the cross burning in Grand Coteau, Louisiana. We also note that the Voting Section dispatched federal observers to monitor the Grand Coteau polls for that election. The Criminal Section currently also has open other election-related matters.

f. What types of allegations of election-related criminal activity would the Civil Rights Division refer to the Criminal Division?

Answer: Please see responses to Question 7, above. As set forth above, the Civil Rights Division generally defers to the Criminal Division when there are allegations of election-related criminal activity that do not include an element of racial discrimination.

9. Under Section 301(a)(3) of the Help America Vote Act of 2002, as of January 1, 2006, each polling place in America was to have "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities." The Act mandates that an accessible voting system must enable individuals with disabilities to vote "in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."

I'm concerned about the Department giving its approval to voting systems that have not been shown to satisfy any nationally-accepted set of standards for voting equipment accessibility to meet the Help America Vote Act's provisions on disability access. For example, it is my understanding that the Department agreed to a vote-by-phone system to satisfy Section 301(a)(3) in resolving a lawsuit against the state of Maine. According to disability rights advocates, vote-by-phone systems are not accessible to many voters with disabilities, including those with motor and dexterity disabilities and hearing and visual impairments, because these systems do not enable them to vote privately and independently, as mandated by the Act.

In a letter of March 4, 2005 signed by Counsel to Assistant Attorney General von Spakovsky, the Department provided guidance to Mississippi on meeting the access requirement. Mr. von Spakovsky directed the state to consult forthcoming voluntary guidance from the Election Assistance Commission, and existing voluntary guidance from the Federal Election Commission. The two commissions provide a set of specifications and requirements against which to evaluate a voting system. I've attached letters from the Association of Assistive Technology Act Programs, the National Council on Independent Living, and the National Disability Rights Network which detail how phone voting falls short of the access guidelines. The organizations urged you not to accept phone voting as a means of complying with the Act's accessibility mandate.

As jurisdictions around the country continue to upgrade their voting machinery, it's a particular concern that the Department has ignored its own guidelines and given its approval to inaccessible voting systems.

a. On what basis did the Department conclude that voting-by-phone would give voters with disabilities the opportunity available to other voters to vote privately and independently?

b. Did the Department consult the Voluntary Voting System Guidelines issued by the Election Assistance Commission in 2005 or the Voting System Standards issued by the Federal Election Commission in 2002? If so, did the Department conclude that phone voting met the guidelines? Please explain.

c. Did the Department consult a variety of disability rights groups representing individuals with a range of different disabilities to determine whether the vote-by-phone system would meet the needs of voters with different types of disabilities?

Answer (a-c): Section 301(a)(3) of HAVA requires that voting systems used in federal elections provide accessibility for persons with disabilities. Many voting systems have been designed to meet this mandate, including direct recording electronic (DRE) voting systems, optical scan ballot marking voting systems and vote-by-phone systems. While each voting system has some characteristics that are helpful to some voters with disabilities, we are not aware of a consensus as to the best existing voting system from an accessibility standpoint. The Department of Justice does not have authority to certify whether particular voting systems are compliant with HAVA.

During the November 2006 election, we understand that at least six states (Vermont, Maine, Connecticut, New Hampshire, Oregon, and Oklahoma) used a vote-by-phone system specifically designed to accommodate voters with disabilities. In many, if not all, of those states, we understand that the system was adopted with the active participation of voters with disabilities in the decision-making process. We are not aware of any legal challenge filed against vote-by-phone voting systems, nor any court ruling that they do not comply with HAVA.

Since HAVA's enactment in late 2002, jurisdictions across the country have had to make choices in order to comply with HAVA's requirements, including the accessibility requirements, by the statutorily-mandated deadline of January 1, 2004,

or January 1, 2006, if the state requested a waiver. The 2002 Voting Systems Standards of the Federal Election Commission (VSS), developed before the enactment of HAVA, addressed accessibility of voting systems to a limited extent, but did not envision vote-by-phone systems specifically, and to date no vote-by-phone systems have been tested to the 2002 VSS. In a July 2005 Advisory, the U.S. Election Assistance Commission (EAC) attempted to provide a "gap analysis" between the 2002 VSS and the requirements of HAVA Section 301(a). That analysis recognized that compliance with HAVA's accessibility requirements is a "complex matter, which must take into account the disability of the voter, the advancement of technology and its availability, and the efforts of the elections officials to make the voting process accessible to disabled voters in a private and independent manner." The EAC did not adopt its 2005 Voluntary Voting Systems Guidelines until December 2005, just days before HAVA's final deadline of January 1, 2006, for states to have completed the selection and procurement of the new machines. These 2005 guidelines, while addressing accessibility more than the 2002 VSS, still are challenged by a lack of agreed upon institutional standards for testing of accessibility, and became effective only in January 2007.

Civil Rights Division Personnel Practices

1. At the November 16, 2006 oversight hearing on the Civil Rights Division, I asked you about the involuntary transfer of Bob Berman, the long-serving career Deputy Chief of the Voting Section who supervised enforcement of Section 5 of the Voting Rights Act. You stated that you would review the circumstances of Mr. Berman's transfer and inform me whether he had been transferred from the Voting Section in retaliation for his role in review of the submissions of the Georgia photo identification law or the 2003 Texas redistricting plan. Please state whether Mr. Berman was transferred in whole or in part because of his role in reviewing the Texas or Georgia submissions and explain in detail the reasons for his transfer.

Answer: Mr. Berman was not transferred in whole or in part in retaliation for his role in reviewing the Georgia and Texas preclearance submissions. Mr. Berman requested and received a detail with the Administrative Office of the United States Courts, which he completed from September 26, 2005 to January 27, 2006. Mr. Berman decided to pursue this detail in connection with a program designed to better prepare employees for becoming a candidate for the Senior Executive Service. Since Mr. Berman's return to the Civil Rights Division, he has served in a senior position in the Office of Professional Development.

2. You testified that you "do not make decisions based on retaliation or ideology" and that you make them "based on the talents and interests and the needs of the Department of Justice Civil Rights Division." In your written testimony, you also state that, as one of your first acts as Assistant Attorney General, you assigned two career Division attorneys to the Personal Development Office.

a. Did you make the decision to transfer Mr. Berman from the Voting Section to his current position? Is he one of the attorneys whom you personally decided to transfer to the Personal Development Office? If not, who decided to transfer Mr. Berman to the Personal Development Office?

Answer: I approved the transfer of Mr. Berman to the Professional Development Office.

b. Please identify all Division personnel, past and present, who were involved in the decision to transfer Mr. Berman, and describe the role of each in that decision.

Answer: The Civil Rights Division has substantial confidentiality interests in the deliberative process that led to my decision.

3. Mr. Berman had developed over many years a broad expertise on Section 5 of the Voting Rights Act, but that expertise is not relevant to his current duties in the Personal Development Office. Although many senior attorneys in the Division have experience that is relevant to the work of the Personal Development Office, few, if any, have Mr. Berman's particular experience and knowledge in the area of Section 5 enforcement. It is my understanding that Mr. Berman did not seek to be transferred from the Voting Section to his current position in the Personal Development Office. Given these facts, isn't his transfer inconsistent with your statement that staffing decisions in the Division are based on attorneys' "talents" and "interests," and on "the needs of the Department?" Please explain why Mr. Berman was selected for his current position.

Answer: I concluded that this transfer would serve Mr. Berman's talents and interests and the needs of the Department, as I understood them.

4. If Mr. Berman wishes to return to the Voting Section, would you be willing to assign him to his former position as Deputy Section Chief responsible for supervising the review of Section 5 submissions?

Answer: Consistent with my management style and my historical practices, any staffing decision would be made based on the talents and interests of an individual and the needs of the Department. In this process, I place great weight on the judgments of career section management.

5. According to a July 23, 2006 article in the <u>Boston Globe</u>, political appointees now have more influence over the Division's attorney hiring process than has traditionally been the case.

a. Please describe in detail the process for recruiting and hiring Honors attorneys in the Civil Rights Division. Please include in your description which persons (and/or positions) in the Department are responsible for each stage in the recruitment and hiring process, including the role of political appointees.

Answer: The Attorney General's Honors Program (HP) is one of the most prestigious and competitive hiring programs in the country. It is administered and promoted by the Office of Attorney Recruitment and Management (OARM). This

is a career office with administrative oversight of all career attorneys within the Department. OARM manages the applications and conducts the initial screening process to make certain that all applicants are eligible for participation in the HP. Applicants are then referred to components (such as the Civil Rights Division) based on the applicant's stated preference. The applications are reviewed by each component, which typically includes the input of both career and political appointees, and which results in applicants being selected for interviews. Applicants are then interviewed by both career employees and political appointees and recommendations are made to the respective Assistant Attorney General. The attorneys most recently involved in the Honors Program hiring process within the Civil Rights Division included attorneys in the Office of the Assistant Attorney General, both career and political appointees, as well as nearly all of the Section Chiefs.

b. Please describe in detail the process for recruiting and hiring lateral career attorneys in the Civil Rights Division. Please include in your description which persons (and/or positions) in the Division are responsible for each stage in the recruitment and hiring process, including the role of political appointees.

Answer: Attorney vacancies are posted on the Department's website. Applicants submit their employment applications and/or resumes to the Office of Attorney Recruitment and Management. When the application period for the vacancy announcement has closed, copies of all resumes received in response to the posting are given simultaneously to the career Section Chief and to the Office of the Assistant Attorney General. The Section Chief chooses candidates to interview, and the Office of the Assistant Attorney General may also choose candidates to be interviewed. Candidates are generally interviewed first by section personnel. Based on those interviews, the Section Chief forwards recommendations to the Office of the Assistant Attorney General, which then interviews the candidates. Hiring decisions are made with input of both the career Section Chief and other Division leadership.

c. Are all Section Chiefs in the Division given an opportunity to review applications for lateral attorney vacancies in their Sections and to help select attorneys whom the Division will interview? If so, has that been the case throughout the current Administration? Please explain in detail the role, if any, that Section Chiefs currently have in reviewing applications for lateral attorney positions. If that role has been changed at any point in this Administration, please explain how it has changed.

Answer: Consistent with my management style and my historical practices, Section Chiefs review the resumes of all applicants for vacancies in their respective sections, and recommend candidates for interviews. The Section Chiefs participate fully in the interview process. Hiring decisions are made with input of both the career Section Chief and other Division leadership. I am not aware of the specific hiring practices of the Division's prior leadership.

d. Are all Section Chiefs allowed to participate in each interview with an applicant for a lateral attorney position in their Sections? Please explain the role, if any, of the career Section Chiefs in interviewing applicants for lateral attorney positions.

Answer: Please see the response to subpart b. above.

6. The Boston Globe reported that the number of attorneys hired by the Division with civil rights backgrounds has declined sharply in recent years, particularly in the Voting Section, Employment Litigation Section, and Appellate Section. Please provide the resumes of all persons hired as career attorneys in the Division during and after 2001.

Answer: We respectfully disagree with many of the assertions made in the *Boston Globe* article, nor is it clear what methodology was employed in reaching its conclusions. Attorneys from an extremely wide variety of backgrounds have been hired to work in the Division since 2001. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. The resumes responsive to your request are attached, redacted to protect the attorneys' addresses, social security numbers, and other personal identifying information that implicates individual privacy interests.

7. In recent years, a large proportion of the Division's resources have been consumed by the litigation of deportation cases. You testified that 87 of 144 briefs, or over 60% of the briefs filed by the Appellate Section this year, were in these non-civil rights immigration cases.

a. For each Section in the Division, please state the number of attorneys currently working on immigration cases, the total number of attorney hours spent on such cases, and the percentage of the Section's work that these cases represent.

Answer: As of January 18, 2007, there were 22 Civil Rights Division attorneys (four in the Appellate Section, two in the Disability Rights Section, four in the Criminal Section, three in the Housing and Civil Enforcement Section, three in the Special Litigation Section, two in the Voting Section, three in the Employment Litigation Section, and one in the Educational Opportunities Section) actively working on an OIL case. The vast majority of OIL cases are awaiting scheduling of oral argument, are under submission, or have been decided.

To the extent you seek attorney hours spent on all OIL cases handled within the Civil Rights Division, those figures, dating from November 2004 to January 5, 2007, are approximately as follows:

Section	Attorney Hours	% of Time Spent on OIL Cases
Appellate	18,040.75	39%
Coordination &	792.25	3%

Review		
Criminal	1,006.25	1%
Disability Rights	1,922.50	3%
Educational Opportunities	1,336.00	4%
Employment Litigation	4,241.75	4%
Housing and Civil Enforcement	2,692.25	2%
Special Litigation	1,610.75	1%
Voting	1,237.00	1%

b. Please explain how the Division determines which attorneys will be assigned to handle immigration cases. If this process differs from Section to Section, please provide an answer for each of the Division's Sections.

Answer: The Civil Division sends all OIL cases assigned to the Civil Rights Division to a Deputy Chief in the Appellate Section. Under guidelines established by the Section Chief, that Deputy Chief then determines which cases will be assigned to available attorneys within the Appellate Section and which will be delegated to the trial sections. Cases are assigned to trial sections on a rotating basis, ensuring that the number of cases assigned is proportional to the size of the attorney staff.

Upon receiving OIL cases, most trial sections assign them based primarily on availability of the lawyers and on a rotating basis. For example, the Disability Rights Section (DRS) often assigns OIL cases to newly hired lawyers, both to provide immediate writing experience and because the newer lawyers do not yet have a DRS caseload. When all the newer lawyers have completed an OIL case, DRS assigns OIL cases to attorneys who have not recently worked on one and who are available. The Voting Section assigns OIL cases on an ad hoc basis, considering availability and other assignments. The Educational Opportunities Section assigns OIL cases to all of its attorneys, based primarily upon workload considerations. The Criminal Section has a special projects unit of four attorneys who work on projects that do not require travel, and the OIL cases now are rotated among those four lawyers, with other Section lawyers occasionally receiving OIL cases. The Housing and Civil Enforcement Section generally assigns OIL cases first to its least experienced attorneys and then to the more experienced attorneys. The Special Litigation Section generally assigns OIL cases alphabetically, with consideration to caseload problems that might require skipping a lawyer at a particular time. That lawyer will be assigned an OIL case as soon as his or her caseload permits it. The Employment Litigation Section creates a rotation of five attorneys to take OIL cases as they are assigned. A lawyer is removed from the rotation once he or she has done three OIL cases, and another lawyer is then placed into the rotation. No one lawyer will do more than three OIL cases until all the lawyers in the Section have done three OIL cases. Nearly all the sections solicit or allow volunteers for OIL cases, other assignments permitting.

c. It is my understanding that some career attorneys in the Division have been assigned to work only on immigration cases, and are not permitted to work on civil rights cases. Please state whether this is true now, and whether it has been the case at any point since the Division began handling immigration litigation. In addition, if so, please explain the reasons why some attorneys have been assigned solely to immigration cases.

Answer: My policy is that all attorneys within the Division are permitted to work on enforcing the federal civil rights laws. As of January 5, 2007, two lawyers in the Division were principally assigned to OIL cases, consistent with their interests and the approval of their Section Chief. One other lawyer has a current docket of slightly more than 50% OIL work, for additional brief-writing and oral argument experience.

d. Does work on non-civil rights matters represent more than 50% of the docket for any attorney in the Division?

Answer: As stated above, three of the Division's approximately 325 lawyers have a docket of slightly more than 50% OIL work.

e. Have any immigration cases been assigned to career attorneys who were hired after 2001?

Answer: The majority of OIL cases have been assigned to career attorneys hired after 2001. As of January 5, 2007, of the 417 OIL cases assigned within the Civil Rights Division, approximately 213 have been assigned to career attorneys hired after January 1, 2001.

8. The Committee received testimony that, in a departure from long-standing practice, career attorneys in the Appellate Section have been told not to discuss their civil rights cases with the career Division attorneys in other Sections who served as trial counsel in the same litigation. Is this true currently, and has it been the case at any point during this Administration? If so, please explain the reason for such a rule, and why you believe that preventing appellate counsel from discussing cases with trial counsel can possibly allow the Division to present the strongest possible case on appeal?

Answer: No. I am not aware of such a rule prior to my tenure as Assistant Attorney General.

9. Please identify each political appointee in the Civil Rights Division who has converted to career status since 2001. Include the political position held by the attorney, the career position that he or she assumed and the date of the conversion from political appointee to career attorney.

Answer: The following attorneys have converted from a Schedule C position in the Division to a position of career attorney in the Department:

Andrew Lelling, Schedule C, Counsel to the AAG, GS-15, Civil Rights Division, to Trial Attorney, GS-905-15, Civil Rights Division, effective 3/9/2003;

Minh Vu, Noncareer SES, Counselor to the AAG, ES-3, Civil Rights Division, to Trial Attorney, GS-905-15, Civil Rights Division, effective 11/2/2003;

James C. Ho, Schedule C, Special Assistant to the AAG, GS-905-14 to Attorney Advisor, Office of Legal Counsel, GS-905-14, effective 9/17/01;

Oliver Benton Curtis, III, Schedule C, Special Assistant to the AAG, GS-905-14 to USAO-SDFL, effective 1/7/2007.

10. Please report all international travel undertaken by employees of the Civil Rights Division since 2001. Please include the employees who undertook each trip and the duration of each trip. Please account for the time of employees while traveling, including any speeches they delivered, meetings they participated in and other activities – including personal time -- while on official travel.

Answer: The Civil Rights Division maintains international travel information for only those employee trips that are processed directly by the Division. If a Division employee takes a trip that is funded by another agency, such as USAID, the State Department, or the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), and the trip is processed directly by the funding agency, that trip would not be included in the Division's records. In addition, the Division processes approximately 3,500 – 4,000 employee trips each year, and the Division's system does not allow a search that distinguishes between domestic and international travel. Consequently, Division staff was required to manually search through 23,292 vouchers to locate international travel information. That search produced the following list of international trips taken by Division employees since 2001 processed directly by the Division. USAID, the State Department, or OPDAT reimbursed the Division for over 60% of these trips that the Division processed.

Alex Acosta traveled to the Dominican Republic on September 24, 2002, through September 27, 2002, to attend an anti-trafficking legislation conference. Mr. Acosta traveled to Ljubljana, Slovenia, and Warsaw, Poland, on May 6, 2005, through May 15, 2005, to discuss trafficking issues. He took one day of personal travel in Warsaw, Poland, on May 14. Mr. Acosta traveled to Paris, France, on June 14, 2004, through June 18, 2004, to attend the Organization for Security and Cooperation in Europe (OSCE) Hate Crime Conference. The Division was reimbursed for Mr. Acosta's trip to Slovenia and Poland.

T. March Bell traveled to Helsinki, Finland, and Tallinn, Estonia, on March 29, 2004, through April 4, 2004, to conduct a week-long training at the invitation of the U.S. Embassy. Mr. Bell traveled to Mexico City, Mexico, on September 6, 2004, through September 10, 2004, for meetings related to the President's Trafficking Initiative. Mr. Bell traveled to Singapore, Malaysia, and Cambodia on December 30, 2004, through January 12, 2005, to conduct assessments to further program design for the President's Trafficking

Initiative. Mr. Bell traveled to Vienna, Austria, on January 22, 2005, through January 27, 2005, at the invitation of the U.S. Embassy to participate in the International Information Programs and the U.S. Speaker and Specialist Program. Mr. Bell traveled to Jakarta, Indonesia, on March 5, 2005, through March 15, 2005, to make presentations and further develop the President's Trafficking Initiative. Mr. Bell traveled to Mexico City, Mexico, on May 2, 2005, through May 5, 2005, for the President's Trafficking Initiative. Mr. Bell traveled to Mumbai, India, and Dar es Salaam, Tanzania, on May 13, 2005, through May 28, 2005, to conduct an assessment to promote program design for the President's Trafficking Initiative. Mr. Bell traveled to San Salvador, El Salvador, on August 15, 2005, through August 19, 2005, to conduct a training at the request of OPDAT. Mr. Bell traveled to Bangkok, Thailand, on September 9, 2005, through September 17, 2005, for training with the International Criminal Investigative Training Assistance Program (ICITAP). Mr. Bell traveled to Mexico City, Mexico, on September 18, 2005, through September 21, 2005, to conduct site assessments for the President's Trafficking Initiative. Mr. Bell traveled to Mexico City, Mexico, on October 17, 2005, through October 19, 2005, to speak at a joint United States-Mexico best practices exchange pursuant to the President's Trafficking Initiative. Mr. Bell traveled to Kilimanjaro, Arusha, and Dar es Salaam, Tanzania, on January 3, 2006, through January 17, 2006, to conduct an assessment and make site selections for the President's Trafficking Initiative. Mr. Bell traveled to Mexico City, Tapachula, and Cancun, Mexico, on February 12, 2006, through February 18, 2006, to meet with local government officials and discuss trafficking cases for the President's Trafficking Initiative. Mr. Bell traveled to Jakarta, Indonesia; Singapore; and Malaysia on April 17, 2006, through April 30, 2006, to assess a task force development for additional sites for the President's Trafficking Initiative. Mr. Bell traveled to Mexico City, Mexico, on May 17, 2006, through May 18, 2006, for meetings related to the President's Trafficking Initiative. Mr. Bell traveled to Singapore and Malaysia on December 9, 2006, through December 16, 2006, to assess additional sites and conduct presentations at the request of the U.S. Embassy pursuant to Malaysian participation in the President's Trafficking Initiative. The Division was reimbursed for each of these trips, other than the September 2005 trip to Bangkok, by a President's Trafficking Initiative account funded by a transfer from USAID, OPDAT, or the State Department.

Ralph Boyd traveled to Geneva and London on August 1, 2001, through August 7, 2001, for the Committee on the Elimination of Racial Discrimination. Mr. Boyd traveled to Rome, Italy; and Davos, Bern, and Zurich, Switzerland; on January 21, 2003, through January 26, 2003, to meet with officials on human trafficking. Mr. Boyd traveled to Ottawa and Montreal, Canada, on February 24, 2002, through February 27, 2002, to be awarded the U.S. Speaker and Specialist Grant. The Division was reimbursed for Mr. Boyd's trip to Canada.

Lou DeBaca traveled to Bangkok, Thailand, on May 7, 2005, through May 16, 2005, for trafficking training. Mr. DeBaca traveled to Mexico City, Mexico, on May 17, 2006, through May 20, 2006, for meetings at the embassy on the Mexican Trafficking Project. Mr. DeBaca traveled to Mexico City, Mexico, on October 23, 2006, through October 25, 2006, for meetings at the U.S. Embassy on the President's Trafficking Initiative. The Division was reimbursed for each of these trips.

Mark Kappelhoff traveled to Garmisch, Germany, on March 5, 2005, through March 12, 2005, for a human trafficking conference. The Division was reimbursed for this trip.

Assistant Attorney General Wan Kim traveled to Geneva, Switzerland, on July 15, 2006, through July 19, 2006, for the International Covenant on Civil and Political Rights Conference. Assistant Attorney General Kim traveled to Singapore and Malaysia on December 9, 2006, through December 17, 2006, to meet with government officials on human trafficking. The Division was reimbursed for Assistant Attorney General Kim's trip to Singapore and Malaysia.

Andrew Lelling traveled to Ottawa, Canada, on June 23, 2003, returning that same day, to meet with officials on human trafficking. Mr. Lelling traveled to Iceland on February 25, 2003, through March 1, 2003, to participate in the International Information Programs and the U.S. Speaker and Specialist Program. The Division was reimbursed for Mr. Lelling's trip to Iceland.

Tobi Longwitz traveled to Geneva, Switzerland, on May 3, 2006, through May 9, 2006, for the Convention Against Torture. Ms. Longwitz traveled to Geneva, Switzerland, on July 14, 2006, through July 20, 2006, for the International Covenant on Political and Civil Rights Conference.

Robert Moossy traveled to Vancouver, Canada, on May 17, 2005, through May 21, 2005, for a human trafficking conference.

Bradley Schlozman traveled to Bangkok, Thailand, on November 14, 2003, through November 23, 2003, for a human trafficking conference. Mr. Schlozman traveled to Tallinn, Estonia, on March 31, 2004, through April 3, 2004, to participate in the International Information Programs and the U.S. Speaker and Specialist Program. Mr. Schlozman took personal travel on March 27 through March 30. Mr. Schlozman traveled to Singapore, Malaysia, and Cambodia on December 30, 2004, through January 12, 2005, for the President's Trafficking Initiative. Mr. Schlozman traveled to New Delhi, India, on March 13, 2005, through March 22, 2005, for a trafficking assessment for the State Department. Mr. Schlozman traveled to Bern, Switzerland, and Tokyo City, Japan, on June 12, 2004, through June 26, 2004, for human trafficking meetings and a conference with Swiss and Japanese officials. He took personal travel on June 17 and 18 in Bern and on June 21 in Tokyo City. Mr. Schlozman traveled to Beijing, China, on August 7, 2005, through August 12, 2005, to meet with Chinese officials on human rights. He took personal travel on August 11. Mr. Schlozman traveled to Taipei, Hong Kong, and Manila on November 23, 2005, through December 7, 2005, to meet with officials on human trafficking. He took personal travel on November 26 and 27 in Taipei. Mr. Schlozman traveled to Dar es Salaam, Tanzania, on January 3, 2006, through January 17, 2006, to meet with officials on human trafficking. The Division was reimbursed for five of these eight trips.

Gordon Todd traveled to Paris, France, on June 14, 2004, through June 18, 2004, to attend the Organization for Security and Cooperation in Europe (OSCE) Conference as part of

the U.S. Delegation. Mr. Todd traveled to Ljubljana, Slovenia, and Warsaw, Poland, on May 6, 2005, through May 15, 2005, to discuss human trafficking issues.

Jason Torchinksy traveled to Brussels, Belgium, on November 14, 2003, through November 20, 2003, to attend a European Union – United States Seminar.

Michael Zubrensky traveled to Athens and Thessaloniki, Greece, on December 7, 2001, through December 13, 2001, for a human trafficking workshop. The Division was reimbursed for this trip.

Holly Wiseman traveled to Moscow and Krasnodar City, Russia, on May 15, 2001, through May 27, 2001, for a *U.S. v. Virchenko* pre-trial investigation.

11. Please provide statistics for the Criminal Section dating back to 1999. Include for each year, the number of defendants charged and the number convicted, broken down according to whether the case involved a color of law, hate crime, human trafficking or FACE violation. For human trafficking matters, please identify those that did not involve a charge pursuant to a statute explicitly prohibiting slavery, involuntary servitude or human trafficking. For those matters, please identify the statutes pursuant to which charges were brought. Also, please identify whether each case was prosecuted by the Criminal Section alone, the U.S. Attorney's Office alone, or jointly.

Answer: In FY 1999, the Criminal Section of the Civil Rights Division charged a total of 138 defendants. Of those defendants, fifty-eight were charged with color of law crimes, forty-five were charged with bias crimes, ten were charged with damage of a house of worship crimes, six were charged with FACE Act violations, eight were charged with sex trafficking crimes, and eleven were charged with labor trafficking crimes. In FY 1999, the Criminal Section convicted a total of ninety-eight defendants. Of those defendants convicted, thirty-one were convicted of color of law crimes, thirty-eight were convicted of bias crimes, fourteen were convicted of damage of a house of worship crimes, two were convicted of FACE Act violations, five were convicted of sex trafficking crimes, and eight were convicted of labor trafficking crimes.

In FY 2000, the Criminal Section of the Civil Rights Division charged a total of 122 defendants. Of those defendants, sixty-six were charged with color of law crimes, thirty-two were charged with bias crimes, sixteen were charged with damage of a house of worship crimes, three were charged with FACE Act violations, and five were charged with sex trafficking crimes. In FY 2000, the Criminal Section convicted a total of 112 defendants. Of those defendants convicted, fifty-four were convicted of color of law crimes, thirty were convicted of bias crimes, thirteen were convicted of damage of a house of worship crimes, five were convicted of FACE Act violations, seven were convicted of sex trafficking crimes, and three were convicted of labor trafficking crimes.

In FY 2001, the Criminal Section of the Civil Rights Division charged a total of 191 defendants. Of those defendants, 103 were charged with color of law crimes, forty-one were charged with bias crimes, five were charged with damage of a house of worship

crimes, four were charged with FACE Act violations, twenty-six were charged with sex trafficking crimes, and twelve were charged with labor trafficking crimes. In FY 2001, the Criminal Section convicted a total of 119 defendants. Of those defendants convicted, fifty-nine were convicted of color of law crimes, twenty-eight were convicted of bias crimes, five were convicted of damage of a house of worship crimes, four were convicted of FACE Act violations, fifteen were convicted with sex trafficking crimes, and eight were convicted of labor trafficking crimes.

In FY 2002, the Criminal Section of the Civil Rights Division charged a total of 125 defendants. Of those defendants, fifty-nine were charged with color of law crimes, twenty were charged with bias crimes, three were charged with damage of a house of worship crimes, two were charged with FACE Act violations, twenty-seven were charged with sex trafficking crimes, and fourteen were charged with labor trafficking crimes. In FY 2002, the Criminal Section convicted a total of 124 defendants. Of those defendants convicted, sixty-eight were convicted of color of law crimes, twenty-five were convicted of bias crimes, two were convicted of damage of a house of worship crimes, one was convicted of a FACE Act violation, twenty-three were convicted with sex trafficking crimes, and five were convicted of labor trafficking crimes.

In FY 2003, the Criminal Section of the Civil Rights Division charged a total of 125 defendants. Of those defendants, sixty-one were charged with color of law crimes, twenty-six were charged with bias crimes, eight were charged with damage of a house of worship crimes, three were charged with FACE Act violations, twenty-one were charged with sex trafficking crimes, and six were charged with labor trafficking crimes. In FY 2003, the Criminal Section convicted a total of 104 defendants. Of those defendants convicted, forty-one were convicted of color of law crimes, twenty-seven were convicted of bias crimes, ten were convicted of damage of a house of worship crimes, five were convicted of FACE Act violations, sixteen were convicted with sex trafficking crimes, and five were convicted of labor trafficking crimes.

In FY 2004, the Criminal Section of the Civil Rights Division charged a total of 156 defendants. Of those defendants, sixty-six were charged with color of law crimes, thirty-eight were charged with bias crimes, four were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, forty were charged with sex trafficking crimes, and seven were charged with labor trafficking crimes. In FY 2004, the Criminal Section convicted a total of 112 defendants. Of those defendants convicted, forty-eight were convicted of color of law crimes, twenty-six were convicted of bias crimes, three were convicted of damage of a house of worship crimes, two were convicted of FACE Act violations, thirty were convicted of sex trafficking crimes, and three were convicted of labor trafficking crimes.

In FY 2005, the Criminal Section of the Civil Rights Division charged a total of 168 defendants. Of those defendants, forty-five were charged with color of law crimes, sixteen were charged with bias crimes, ten were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, seventy-five were charged with sex trafficking crimes, and twenty-one were charged with labor trafficking crimes. In FY

2005, the Criminal Section convicted a total of 109 defendants. Of those defendants convicted, fifty-six were convicted of color of law crimes, thirteen were convicted of bias crimes, four were convicted of damage of a house of worship crimes, one was convicted of a FACE Act violation, twenty-five were convicted of sex trafficking crimes, and ten were convicted of labor trafficking crimes.

In FY 2006, the Criminal Section of the Civil Rights Division charged a total of 200 defendants. Of those defendants, sixty-six were charged with color of law crimes, twenty were charged with bias crimes, two were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, eighty-five were charged with sex trafficking crimes, and twenty-six were charged with labor trafficking crimes. In FY 2006, the Criminal Section convicted a total of 180 defendants. Of those defendants convicted, fifty-five were convicted of color of law crimes, nineteen were convicted of bias crimes, seven were convicted of damage of a house of worship crimes, one was convicted of a FACE Act violation, sixty were convicted of sex trafficking crimes, and thirty-eight were convicted of labor trafficking crimes.

For human trafficking matters handled by the Civil Rights Division between FY 2001 and 2006, 255 of 360 defendants prosecuted by the Civil Rights Division and United States Attorneys' Offices, in human trafficking-related offenses, have been charged with or pleaded guilty to human trafficking charges. Defendants not charged with human trafficking offenses were charged with crimes such as alien harboring (8 U.S.C. § 1324), money laundering (18 U.S.C. § 1956 et seq.), visa fraud (18 U.S.C. § 1946 et seq.), or similar offenses. Consistent with the United States Attorney's Manual, the Division bases its charging decision on the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction. During the time period applicable to the TVPA as described above, 3.2% of human trafficking cases were handled by the Criminal Section alone. The Civil Rights Division and the U.S. Attorney's Office participated in all other cases. Additional trafficking cases involving victims who are prosecuted by the Criminal Division.

12. The following questions relate to the removal of Albert Moskowitz as chief of the Criminal Section:

a. What was the date of your confirmation as Assistant Attorney General by the Senate?

Answer: November 4, 2005

b. On what date were you sworn in as Assistant Attorney General?

Answer: November 9, 2005

c. On what date was Albert Moskowitz informed of the decision that he was to be removed as Chief of the Criminal Section?

Answer: Pursuant to a discussion on or about November 8, 2005, Mr. Moskowitz began serving as Counsel to the Assistant Attorney General, specifically as Acting Director of the Professional Development Office, on November 27, 2005.

d. On what date did his removal become effective?

Answer: Mr. Moskowitz began serving as Counsel to the Assistant Attorney General, specifically as Acting Director of the Professional Development Office, on November 27, 2005.

e. Did you make the decision to remove Mr. Moskowitz?

Answer: I fully supported the decision that, from a management perspective, the Division would best be served by having Mr. Moskowitz serve as the head of the Office of Professional Development.

f. Did you inform him of his removal?

Answer: I participated in informing Mr. Moskowitz that he would head the Professional Development Office.

g. Who else was involved in the decision? Please describe in detail your consultations regarding the removal of Mr. Moskowitz.

Answer: The Civil Rights Division has substantial confidentiality interests in the deliberations process that led to this decision.

13. Please provide for the years 2002 to the present a copy of each award recommendation for a career attorney as it was transmitted from the relevant Section Chief to the relevant reviewer. Please also provide a copy of each final award recommendation, identifying any changes made by a reviewer.

Answer: The Division has substantial confidentiality interests in internal deliberations leading to award decisions, including recommendations from Section Chiefs.

14. Please provide a copy of each performance evaluation of a career attorney that was changed by a reviewer after it was transmitted from a Section Chief to a reviewer. Please also provide a copy of each such performance evaluation as it was originally transmitted from the Section Chief to the relevant reviewer.

Answer: The Division has substantial confidentiality interests in internal deliberations, including performance evaluations.

15. Please provide a detailed account of the firing of Ty Clevenger from the Special Litigation Section.

Answer: Mr. Clevenger resigned from the Department of Justice on October 5, 2006. Additional information related to that decision implicates significant individual privacy interests.

16. You stated that the attrition rate for the Division is in line with its historical averages. That statement is at odds with publicly reported data, which suggest that some 19% of attorneys left the Division in 2005 and that over half of the attorneys in the Voting Section have left in the past 18 months, whether through departures, involuntary transfers or details. Do you dispute these numbers? If not, how do you explain your lack of concern about the desire of attorneys to leave the Civil Rights Division? As leader of the Division, shouldn't you be concerned that the Division is not a desirable place to work? Have you made inquiries with the Voting Section leadership to learn why attorneys are leaving the Section? The numbers alone raise serious concerns about the job that the management of the Section is doing. Please review the performance of management and the causes for the low morale in the Voting Section and report your findings.

Answer: The average attrition rate in the Civil Rights Division during this Administration is almost identical to a comparable period during the previous Administration. We nevertheless make every effort to retain our talented and experienced attorneys. I have worked hard to create an environment of hard work, mutual respect, open dialogue, and professionalism. In this vein, the Division recently created a new Office of Professional Development that is focused on the needs of individual attorneys for training and career resources. The Division also recently created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns. I am also in regular contact with the leadership of each Section, including the Voting Section, and work closely with career staff to address any problems that arise.

The Division's attorney attrition rate in FY 2005 was 17.75 percent. During FY 2005, a number of Division attorneys accepted a retirement package offered to multiple Justice Department components.

The Voting Section has achieved some of its highest levels of enforcement during the past year. In fact, the 18 new lawsuits the section filed in CY 2006 is more than twice the average number of lawsuits filed by the Division annually over the preceding 30 years. In the past year, the Voting Section has brought lawsuits under Sections 2, 4(f)(4), 5, 203, and 208 of the Voting Rights Act; the 1960 Civil Rights Act; the National Voter Registration Act; the Help America Vote Act; and the Uniformed and Overseas Citizens Absentee Voting Act. The Division deployed a record number of monitors and observers to jurisdictions across the country for the 2006 mid-term elections. In FY 2006, the Voting Section processed the largest number of Section 5 submissions in its history. Our commitment to enforcing the language minority requirements of the Voting Rights Act remains strong, with five such lawsuits filed in CY 2006, which is only one short of the all-time record set in CY 2005. In FY 2006, the Division's Voting Section obtained 37.5%, or three out of eight, of the judgments ever obtained under Section 208 of the Voting Rights Act in its twenty-four year history. In CY 2006, the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. In CY 2006, the Voting Section also filed

the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We are pleased with the direction and accomplishments of the Voting Section under its current management.

17. You stated that ideology is not a factor in hiring in the Civil Rights Division. How, then, do you account for the fact that the profile of attorneys being hired by the Division – as documented in recent press reports -- has changed dramatically and includes a disproportionate number of persons hired who were members of the Federalist Society or conservative religious organizations, or who worked for Republican candidates or organizations, or who clerked for conservative judges? Is it your position that these changes occurred by chance?

Answer: As set forth above, we seek to hire outstanding attorneys with demonstrated legal skills and abilities regardless of their political, ideological, and religious backgrounds, and the attorneys that we have hired come from an extremely wide variety of backgrounds. As we do not employ a political litmus test in making hiring decisions, it is to be expected that our hires reflect a wide scope of talented attorneys from all political, ideological, and religious backgrounds who are committed to the work of the Division.

18. You stated that you focus on excellence in hiring. Yet, the belief appears widespread among law students and other potential applicants – and the record supports their belief -- that ideology is crucial in hiring decisions by the Civil Rights Division. The profile of recent hires supports this belief and has discouraged highly qualified applicants from applying to the Civil Rights Division. The profile of recent applicants shows that the Division no longer hires from a large segment of the most sought after law school graduates. Aren't you concerned that the Division's hiring practices are diluting the talent that the Division is attracting?

Answer: No. The Civil Rights Division continues to attract top-notch legal talent to its ranks, including from the top law schools and the most prestigious judicial clerkships.

19. The Division has strayed from its original core mission to combat racial discrimination, and I'm concerned that the Division's current hiring practices are contributing to this problem. In particular, the Division traditionally hired many attorneys who had experience in enforcing civil rights laws on behalf of minorities. How many applicants have you hired in the past three years who brought experience in enforcing civil rights laws on behalf of racial minorities? Have you hired any attorneys who have previously worked for civil rights groups that enforce civil rights laws on behalf of minorities?

Answer: The Civil Rights Division continues to aggressively combat racial discrimination. During this Administration, the Division has filed a number of cases on behalf of racial minority victims, including:

- **In November 2006, the Division filed a complaint against Tallahassee Community College (TCC) alleging that TCC failed to select an African-American applicant for the position of HomeSafenet Trainer because of the applicant's race in violation of Title VII. Under a court-approved consent decree entered on November 7, 2006, TCC agreed to offer the applicant $34,363 in back pay and accumulated interest.**

- **In October and November 2006, defendants Joseph Kuzlik and David Frederic pleaded guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial couple in an attempt to force them out of their Ohio home.**

- **In August 2006, the Division obtained a verdict against a former apartment manager for discrimination on the basis of race as a result of his refusal to rent to African Americans in Boaz, Alabama. The Division conducted an investigation of the manager and his employer through the use of fair housing testers. The defendant was ordered to pay a civil penalty of $10,000. Earlier in the year, the defendant's employer agreed to pay a civil penalty of $17,000 and compensatory damages of $32,700 to individuals who were subjected to the alleged discriminatory housing practices.**

- **In July 2006, the Division filed suit against the City of Chesapeake, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination on the basis of race and national origin in violation of Section 707 of Title VII of the Civil Rights Act of 1964 by using a mathematics test to screen applicants for entry-level police officer positions in a manner that had an unlawful disparate impact against African-American and Hispanic applicants.**

- **In July 2006, the court entered a consent decree resolving our suit, which was filed in April 2006, against the City of Virginia Beach, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination in violation of Section 707 of Title VII through its use of a mathematics test that disproportionately excluded African-American and Hispanic applicants for the position of entry-level police officer. The decree alters the City's method for selecting entry-level police officers in a way that will eliminate the disparate impact of the mathematics test. In addition, the decree requires the City to provide remedial relief, including money damages, priority job offers, and retroactive seniority, to identifiable African-American and Hispanic victims of the challenged test.**

- **In July 2006, the Division filed a complaint against the City of Euclid, Ohio, alleging that the mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens in violation of Section 2 of the Voting Rights Act. In its investigation, the Division found that while African Americans composed nearly 30% of Euclid's electorate, and although there had been eight recent African-American candidacies for the city council, not a single African-American candidate had ever been elected to that body. Further, the Division found that in seven recent city council elections, white voters voted sufficiently as a bloc to defeat the African-American voters' candidates of choice.**

- **In March 2006, in *United States v. Nix* (N.D. Ill.), the defendant entered a guilty plea to interference with an Arab-American family's housing rights by igniting an explosive device inside the family's van that was parked near their home.**

- **In 2004, the Division entered into a consent decree resolving allegations that Cracker Barrel Old Country Store, Inc., a nationwide family restaurant chain, accommodated a severe and pervasive pattern of racial discrimination at its restaurants, including allowing its servers to refuse to serve African-American customers and treating such customers differently in terms of seating, service, and responsiveness to complaints. Cracker Barrel agreed to implement far-reaching policy changes and training programs to remedy these violations.**

- **In 2004, the Division alleged that the City of Gallup, New Mexico, engaged in a pattern or practice of hiring discrimination on the basis of race against Native-American applicants for jobs in various City departments. The Division obtained a very favorable consent decree and is currently engaged in determining appropriate remedial relief for individual victims of discrimination.**

- **In June 2004, the Division filed the first lawsuit since 1990 alleging racial discrimination in education under Title IV of the Civil Rights Act against Lafayette High School in New York City. The complaint alleged that Asian students were severely harassed by other students and the school district was deliberately indifferent to the harassment. The suit was resolved by consent decree filed simultaneously with the complaint.**

- **In 2003, the Division successfully settled a racial discrimination and retaliation lawsuit against the city of Fort Lauderdale, Florida, for a total of $455,000 in compensatory damages. The lawsuit alleged that the city of Fort Lauderdale violated Title VII by denying an African-American employee promotion because of his race. The lawsuit further alleged that the city retaliated against the employee when he complained that he had been denied promotion for discriminatory reasons.**

- **In 2002, the Division filed and resolved *United States v. Fidelity Federal Bank* (E.D.N.Y.), a case involving a pattern or practice of discriminatory abusive credit collection practices on the basis of national origin against Hispanics in violation of the Equal Credit Opportunity Act. Under the terms of the Settlement Agreement and Order, Fidelity paid $1.6 million to both compensate the victims and fund a Consumer Education Program.**

- **Between FY 2001 and FY 2006, the Division brought 39 cross-burning prosecutions, charging a total of 60 defendants. The Division convicted 58 defendants during that same period. For example, in September 2006, two defendants were convicted of conspiring to interfere with the housing rights of a mixed-race family that included an African American by burning a cross in front of their house. In a separate case in August 2006, a defendant pleaded guilty to intimidating and interfering with an African-American family that was negotiating for the purchase of a house by burning a cross on the property adjacent to the house.**

- **Since 2001, the Division has obtained four consent decrees involving redlining of predominantly African-American neighborhoods by major banking institutions. The first, filed and resolved in 2002, involved a major bank in Chicago that will invest more than $10 million and open two new branches in minority neighborhoods to settle a lawsuit alleging that it had engaged in mortgage redlining on the basis of race and national origin. In May 2004, the Division obtained a consent decree requiring a bank to invest $3.2 million in small business and residential loan programs and to open three new branches in the City of Detroit. This was the first redlining case the Division had ever brought alleging discrimination in business lending. In July 2004, the Division filed and resolved a lawsuit against another bank in Chicago. The suit alleged that the bank intentionally avoided serving the credit needs of residents and small businesses located in minority neighborhoods. The bank has agreed to invest $5.7 million and open new branches in these neighborhoods. On October 13, 2006, the Division filed a complaint alleging that Centier Bank discriminated on the basis of race and national origin by refusing to provide its lending services to residents of minority neighborhoods in the Gary, Indiana, metropolitan area in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The suit was resolved by a consent decree entered on October 16, 2006, which requires the Bank to: invest a minimum of $3.5 million in a special financing program for residential and CRA small business loans; commit at least $375,000 in targeted advertising; invest $500,000 to provide credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses of African-American and Hispanic areas and to sponsor programs offered by community or governmental organizations engaged in fair lending work; open or acquire at least two full service offices within designated African-American neighborhoods; expand an existing supermarket branch in a majority Hispanic neighborhood to provide full lending services; provide the same services offered at its majority white suburban locations to all branches regardless of their location; and train employees on the requirements of the Fair Housing Act and Equal Credit Opportunity Act in addition to other remedial relief.**

- **After September 11, 2001, the Civil Rights Division implemented an initiative to combat "backlash" crimes involving violence and threats aimed at individuals perceived to be Arab, Muslim, Sikh, or South Asian. This initiative has led to numerous prosecutions involving physical assaults, some minor and some involving dangerous weapons and resulting in serious injuries, as well as threats made over the telephone, on the internet, through the mail, and in face-to-face interactions. We have also prosecuted cases involving shootings, bombings, and vandalism directed at homes, businesses, and places of worship. The Department has investigated more than 750 bias-motivated incidents since September 11, 2001. Our efforts have resulted in 32 federal convictions in "backlash" cases. The Department also assisted local law enforcement in bringing more than 160 such criminal prosecutions.**

While the Division has not maintained such hiring statistics, the attorneys that we have hired come from an extremely wide variety of backgrounds, including those who have previously worked for civil rights groups that enforce civil rights laws on behalf of minorities.

20. I'm also concerned that lack of experience at the political level may be contributing to this problem. Describe the civil rights experience that each of the political appointees in the Division had at the time of his or her appointment. Also, please provide the resume of each political appointee.

Answer: Like every other component of the Department of Justice, the Civil Rights Division is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Division considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Attorneys from an extremely wide variety of backgrounds and experiences have been hired to work in the Division under this Administration. For example, the Division has hired not only attorneys with significant prior civil rights experience, but also attorneys with other crucial skills, such as a significant record of actual litigation or management experience. We will continue to hire the best attorneys available. We measure three important things, among others, when evaluating candidates for attorney positions in the Civil Rights Division: whether they have a demonstrated record of excellence, whether they are talented attorneys consistent with that excellent record, and whether they share a commitment to the work of the Division.

The Division's political appointees also reflect these hiring standards. President Bush has appointed both the first Hispanic American and the first immigrant to head the Civil Rights Division. The Office of the Assistant Attorney General has included men and women from all backgrounds, including African-American, Native-American, Asian-American, and Hispanic attorneys committed to the work of the Civil Rights Division. The resumes responsive to your request are attached, redacted to protect attorneys' addresses, social security numbers, and other personal identifying information that implicates individual privacy interests.

Employment Litigation Section

1. Many of the Employment Litigation Section's cases are based on referrals from the Equal Opportunity Employment Commission under Title VII of the Civil Rights Act of 1964, which outlaws job discrimination based on race, color, national origin, religion, or gender. The EEOC sends the Division almost 400 charges of discrimination a year in which its initial determination has found reasonable cause to believe that discrimination occurred. The Division also has nationwide jurisdiction under Title VII to investigate systemic discrimination. Yet according to the Division's website, if one excludes cases that were developed by the Clinton Administration or by a U.S. Attorney's office, the Division has filed only 33 Title VII job discrimination cases since 2001. That's an average of only 5 or 6 Title VII cases a year. The Division's Employment Litigation Section has nearly 30 attorneys. Can you explain why the Section currently files only a handful of Title VII cases each year?

Answer: Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Most allegations of employment discrimination are made against private employers. Those claims are

investigated and potentially litigated by the Equal Employment Opportunity Commission ("EEOC"). The Civil Rights Division's Employment Litigation Section is responsible for enforcing Title VII against public employers.

The Employment Litigation Section received 606 charges from the EEOC in CY 2001, 597 charges in CY 2002, 504 charges in CY 2003, 393 charges in CY 2004, 393 charges in CY 2005, and 290 charges in CY 2006. The EEOC itself does not file suit on every charge in which it has found reasonable cause to believe that a private employer has violated Title VII. It also is important to note that a strong employment discrimination case can, at times, take years to develop.

Pursuant to Section 707 of Title VII, the Attorney General has authority to bring suit against a state or local government employer where there is reason to believe that a "pattern or practice" of discrimination exists. These cases are factually and legally complex, as well as time-consuming and resource-intensive. In Fiscal Year 2006, we filed three complaints alleging a pattern or practice of employment discrimination.

Additionally, during Fiscal Year 2006, the Section resolved liability or relief issues in eight pattern or practice lawsuits. Six of these cases involved consent decrees that were filed in Fiscal Year 2006, and two involved cases in which consent decrees were filed in Fiscal Year 2005.

We remain committed to the vigorous and even-handed enforcement of Title VII, as enacted by Congress.

2. One of the main reasons the Justice Department was given authority to enforce Title VII was to enable the federal government to correct broad, systemic discrimination that private citizens or civil rights groups lacked the resources to challenge. The Division's authority to file pattern or practice suits under Title VII is its main way of challenging systemic job discrimination. Under Section 707 of Title VII, the Division has authority to investigate potential problems of systemic race discrimination anywhere in the country, without waiting for a referral from the EEOC. But the Division's record on such cases is even worse than its overall record on Title VII.

Except for cases developed by the Clinton Administration or a U.S. Attorney's Office, for the first three years of the Administration, the Division did not file a single pattern or practice suit. In the entire <u>six</u> years of this Administration, the Department has filed only <u>two</u> Title VII pattern or practice cases to correct systemic racial discrimination against African Americans or Latinos. The first wasn't filed until February of this year. During the same period, the Division filed two pattern or practice cases alleging discrimination against white men. This record doesn't reflect the reality that race discrimination against African Americans and Latinos is still an unfortunate fact of life in America. Is it your view that job discrimination against whites is as widespread as job discrimination against African American and Latino workers? If not, why has the Division filed so few cases alleging a pattern or practice of discrimination against Latinos and African Americans, and how do you explain this allocation of the Division's resources?

Answer: Since my confirmation as Assistant Attorney General, the Civil Rights Division has filed three lawsuits alleging a pattern or practice of employment discrimination, including two on behalf of African-American and Hispanic victims. In comparison, the Division filed one such case in FY 1998; one in FY 1999; and one in FY 2000.

Moreover, the Division filed four cases alleging a pattern or practice of employment discrimination in CY 2004, which is the largest number filed in a single year since the mid-1990s, as well as two in CY 2005.

We remain committed to the vigorous and even-handed enforcement of Title VII, as enacted by Congress.

3. Excluding cases developed by the Clinton Administration or by a U.S. Attorneys' Office, the Division has filed only 25 Title VII cases based on individual charges of discrimination. Not a single case alleged national origin discrimination against a Latino worker. In addition, only two of these cases alleged race discrimination against African Americans – an average of about one case every two years. Why is it that of almost 400 discrimination charges the Division receives from the EEOC each year under Title VII, the Division has filed just two cases in six years under Section 706 of Title VII alleging race discrimination against African Americans and none alleging national origin discrimination against Latinos?

Answer: The Civil Rights Division remains diligent in combating employment discrimination against all Americans regardless of their race, color, religion, sex, or national origin. To that end, the Division has vindicated the rights of African-American workers who have been discriminated against on the basis of race in violation of Title VII. The Division has filed or authorized six (not two) Section 706 cases on behalf of African-American workers during this Administration. For example, on November 2, 2006, the Division filed a complaint in *United States v. Board of Directors of Tallahassee Community College* (N.D. Fla.), pursuant to Section 706 of Title VII, alleging that the victim was discriminated against on the basis of his race when he was not promoted to a particular position. On July 13, 2004, we filed a complaint in intervention in *Lemons & United States v. Pattonville Fire Protection District* (E.D. Mo.), pursuant to Section 706 of Title VII, alleging that the victim was harassed on the basis of his race and constructively discharged from his unit. The Division also has filed or authorized three pattern or practice complaints alleging discrimination on the basis of race against African Americans during this time frame.

During this Administration, the Division also has vindicated the rights of Hispanic workers who have been discriminated against on the basis of national origin in violation of Title VII. For example, the Division obtained a settlement agreement with the District of Columbia Public Schools that favorably resolved, pre-suit, a Section 706 referral in which the charging party, a Hispanic man, alleged that he was the victim of discrimination on the basis of national origin. The Division also has filed three pattern or practice complaints alleging discrimination on the basis of national origin against Hispanics during this time frame.

This Administration places a very high priority on developing successful cases. Our results reflect this effort. To date, this Administration has prevailed in or favorably resolved every complaint that it has filed under Section 706. With the sole exception of *United States v. City of Garland*, which was filed in 1998, this Administration has successfully prosecuted or favorably resolved every case it has brought to trial under Section 707.

In contrast, the number of referred EEOC charges is an inaccurate measure of the Division's success. There are myriad reasons for this. For example, the Division may take an individual referral and then expend time and resources on an investigation to determine whether a "pattern or practice" suit is more appropriate. In addition, private counsel often "cherry-pick" the best Section 706 charges, i.e., those allegations that are most suit-worthy.

4. In the past six years, the Division has filed two cases based on individual charges alleging race or national origin discrimination against white males, compared to only two individual cases alleging race discrimination against African Americans and none alleging discrimination against Latinos.

a. Do you believe that race and ethnic discrimination against white men is a greater problem in American workplaces than racial discrimination against Latino workers? If not, how do you explain the fact that the Division has filed more Title VII cases alleging race or national origin cases against white males than against Latinos?

b. Do you believe that racial and ethnic discrimination against white men is as significant a problem in American workplaces as racial discrimination against African Americans?

c. Please explain why the Division focused its enforcement of racial and ethnic discrimination on charges filed by white males.

Answer (a-c): Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, national origin, sex, and religion. Title VII's protections extend to all Americans regardless of their race, color, national origin, sex, or religion. The Civil Rights Division is committed to vigorously enforcing Title VII and combating employment discrimination on behalf of all Americans.

Last year, the Division filed three lawsuits alleging a pattern or practice of employment discrimination. This compares to one filed in FY 1998; one filed in FY 1999; and one filed in FY 2000. The lawsuits filed in 2006 included *United States v. City of Virginia Beach* (E.D. Va.), and *United States v. City of Chesapeake* (E.D. Va.), in which the Division alleged that the defendants had violated Section 707 by screening applicants for entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. In *Virginia Beach*, the parties reached a consent decree; the *City of Chesapeake* litigation is ongoing.

During the past six years, the Division also has filed pattern-or-practice of employment discrimination lawsuits on behalf of African Americans, Hispanic Americans, Native

Americans and women, among others. **We are fully committed to the vigorous enforcement of federal law.**

5. For each calendar year from 2001 to 2006, please specify:

   a. The total number of charges received by the Employment Litigation Section from the EEOC.

   b. The total number of EEOC charges received by the Employment Litigation Section that allege racial discrimination against African Americans.

   c. The total number of EEOC charges received by the Employment Litigation Section that allege national origin discrimination against Latinos.

   d. The total number of EEOC charges received by the Employment Litigation Section that allege racial or national origin discrimination against Asian Americans.

   e. The total number of EEOC charges received by the Employment Litigation Section that allege racial or national origin discrimination against Native Americans.

   f. The total number of EEOC charges received by the Employment Litigation Section that allege racial or national origin discrimination against African Americans.

   Answer (a-f): The Employment Litigation Section received 606 charges from the EEOC in CY 2001, 597 charges in CY 2002, 504 charges in CY 2003, 393 charges in CY 2004, 393 charges in CY 2005, and 290 charges in CY 2006.

   Title VII's protections apply to all persons regardless of their race and national origin. Though the Division tracks EEOC referrals by protected category (e.g. race and national origin), we do not track EEOC referrals by subcategories within the protected categories (e.g. African American, Latino, Native American, and Asian American). Consequently, we can provide only the total number of charges for the protected categories of race and national origin referred to the Department by the EEOC. According to our records, in FY 2001, race was listed as a basis of discrimination in 284 charges while national origin was listed as a basis of discrimination in 77 charges. In FY 2002, the numbers were 139 and 72; in FY 2003, they were 147 and 51; in FY 2004, they were 107 and 54; in FY 2005, they were 188 and 43; and in FY 2006, the numbers were 123 and 31. Some of these numbers include charges in which the charging party alleged both race and national origin as a basis of discrimination.

6. The subjects on which the Division chooses to file suit, typically reflect its

overall enforcement priorities. Given that the Division has filed so few Title VII cases alleging employment discrimination against African Americans and Latinos, is it fair to conclude that employment discrimination against these groups is a low priority for the Division?

Answer: Please see the answer to question number 4.

7. In answers to written questions provided to the Committee on October 27, 2005, you stated that you could not provide complete answers to my questions about investigations by the Employment Litigation Section because "the management information systems do not accurately track the number of hours spent by Section attorneys on an investigation or litigation tasks," "the date on which an investigation is authorized," or "the demographic identity of the potential victims" or "whether the investigation involves claims of discrimination based on race, ethnicity, gender, color, or religion." This seems to be basic information that would be essential for monitoring the Division's enforcement and evaluating its priorities. You informed me that "if confirmed, [you] would work with both attorneys and information management systems professionals to determine whether it would be appropriate and feasible to expand the categories of information collected for the Section's investigations and cases, as well as to better track the time spent by Employment Litigation Section professionals in these matters."

Are you now able to provide a complete answer to the following question? Please specify, for each calendar year since January 2001, the number of Employment Litigation Section investigations formally authorized by the Civil Rights Division, and for each investigation:

a. the date the investigation was authorized;

b. whether the investigation is currently pending, and if not, at what stage of the investigation it was closed (i.e., after formal investigation, after suit was recommended, after suit was filed, after trial, or after appeal);

c. the subject matter of the investigation and the statutory authority under which it was conducted, including whether the investigation involved a potential pattern or practice of employment discrimination;

d. whether the investigation involved claims of discrimination based on race, ethnicity, gender, color, or religion, and the demographic identity of the potential victims; and

e. the total number of hours spent by career attorneys in the Employment Litigation Section on the investigation and/or litigation.

Answer (a-e): The Employment Litigation Section's information system collects data regarding the current number of open investigations, the number of investigations opened and closed by fiscal year, and authority for these investigations. The system does not track investigations by the type of discrimination alleged. Investigations may be opened by the Section under Title VII or the Uniform Servicemembers Employment and Reemployment

Rights Act (USERRA), which the Section assumed responsibility for enforcing in FY 2005 and FY 2006. Title VII cases may allege individual violations under Section 706 of Title VII, a pattern or practice under Section 707 of Title VII, or both individual discrimination and a pattern or practice of discrimination under both Sections 706 and 707.

The data tracked by our system is summarized below.

In FY 2006, the Section initiated 29 Section 706 investigations, 1 Section 707 investigation, 1 dual Section 706/707 investigation, and 25 USERRA investigations. The Section closed 36 Section 706 investigations and cases, 6 Section 707 investigations and cases, and 23 USERRA investigations and cases. The Section filed 3 Section 706 complaints and motions to intervene, 3 Section 707 complaints and motions to intervene, and 4 USERRA complaints and motions to intervene. The Section entered into 5 Section 706 settlement agreements and consent decrees, 4 Section 707 settlement agreements and consent decrees, 2 dual Section 706/707 settlement agreements and consent decrees, and 6 USERRA settlement agreements and consent decrees.

In FY 2005, the Section initiated 26 Section 706 investigations, 5 Section 707 investigations, 2 dual Section 706/707 investigations, and 33 USERRA investigations. The Section closed 22 Section 706 investigations and cases, 7 Section 707 investigations and cases, and 6 USERRA investigations and cases. The Section filed 4 Section 706 complaints and motions to intervene, 1 Section 707 complaint or motion to intervene, 1 dual Section 706/707 complaint or motion to intervene, and 6 USERRA complaints and motions to intervene. The Section entered into 8 Section 706 settlement agreements and consent decrees, 4 Section 707 settlement agreements and consent decrees, and 3 USERRA settlement agreements and consent decrees.

In FY 2004, the Section initiated 33 Section 706 investigations and 47 Section 707 investigations. The Section closed 37 Section 706 investigations and cases, 10 Section 707 investigations and cases, and 3 dual Section 706/707 investigations and cases. The Section filed 7 Section 706 complaints and motions to intervene, 3 Section 707 complaints and motions to intervene, and 1 dual Section 706/707 complaint or motion to intervene. The Section entered into 5 Section 706 settlement agreements and consent decrees and 1 Section 707 settlement agreement or consent decree.

In FY 2003, the Section initiated 26 Section 706 investigations and 9 Section 707 investigations. The Section closed 45 Section 706 investigations and cases and 5 Section 707 investigations and cases. The Section filed 5 Section 706 complaints and motions to intervene. The Section entered into 6 Section 706 settlement agreements and consent decrees.

In FY 2002, the Section initiated 43 Section 706 investigations. The Section closed 46 Section 706 investigations and cases, 14 Section 707 investigations and cases, and one investigation or case under Executive Order 11246. The Section filed 5 Section 706 complaints and motions to intervene, 1 Section 707 complaint or motion to intervene, and 1 Eleventh Amendment plaintiff-intervenor case. The Section entered into 13 Section 706

settlement agreements and consent decrees, 1 Section 707 settlement agreement or consent decree, and 1 settlement agreement or consent decree filed under the Small Business Act.

In FY 2001, the Section initiated 37 Section 706 investigations and 1 Section 707 investigation. The Section closed 21 Section 706 investigations and cases, 7 Section 707 investigations and cases, and 19 Section 709 cases. The Section filed 6 Section 706 complaints and motions to intervene, 1 Section 707 complaint or motion to intervene, and 4 Eleventh Amendment plaintiff-intervenor cases. The Section entered into 4 Section 706 settlement agreements and consent decrees, 1 Section 707 settlement agreement or consent decree, and one settlement agreement or consent decree filed under Executive Order 11246.

8. What have you done to improve the Employment Litigation Section's information tracking?

Answer: The Department of Justice is in the process of developing a Department-wide Litigation Case Management System (LCMS). The LCMS is projected to improve the flow of case information across components in the Department. The Division's ICM system will be replaced by LCMS in the next few years. The Division also continually reviews its existing information tracking systems to make sure that they are as complete and accurate as possible. The Employment Litigation Section, for example, has devoted significant resources to reviewing the existing databases to correct problems that were causing inaccuracies in the existing databases.

9. Please list the specific categories of information currently provided by Employment Litigation Section personnel concerning active investigations. Does that information differ from the information recorded by the Division's other civil sections concerning their respective investigations, and if so, why?

Answer: The Interactive Case Management (ICM) system is a customized computer database and software system designed to track, count, and measure the work that is performed by each of the Division's ten program-related sections. Due to the unique nature of the work of each section in the Division, ICM procedures vary to some degree among sections, but all sections follow some basic procedures. ICM tracks two types of activity: matters and cases. In general, a "matter" is an issue under investigation, while a "case" is an action in which a complaint has been filed. At the outset of a matter or case, the section's administrative staff enters information about the matter or case into the ICM system. The ICM system notes the attorney(s) assigned to the matter or case; the geographic location, date, and nature of the reported allegation; and any law enforcement or other referring agency. Updates of significant activity are provided throughout the duration of the matter or case. When a matter or case is closed, it is noted as closed in the ICM system.

10. Please list the specific categories of information currently provided by Employment Litigation Section personnel concerning pending cases. Does that information differ from the information recorded by other civil sections concerning their litigation, and if so, why?

See response to question 9 above.

11. It is my understanding that Division personnel in the Employment Litigation Section are required to record the number of hours spent each day on active cases and matters. Is that correct, and if so, why did you consider that information "too inaccurate for submission to members of Congress"?

Answer: The Interactive Case Management (ICM) system is a customized computer database and software system designed to track, count, and measure the work that is performed by each of the Division's ten program-related sections. While Division personnel do record time in the ICM, these records are not reviewed for accuracy.

The Department of Justice is in the process of developing a Department-wide Litigation Case Management System (LCMS). The LCMS is projected to improve the flow of case information across components in the Department. The Division's ICM system will be replaced by LCMS in the next few years.

<u>Educational Opportunities</u>

1. Since you became reviewer for the Education Section as Deputy Assistant Attorney General and during your tenure as Assistant Attorney General, the Education Section has been noticeably inactive. In particular, it no longer appears committed to pursuing desegregation as a goal. In fact, the Department, in a brief with your name on it, has opposed even voluntary efforts to achieve desegregation. Please provide a full account of the Education Section's efforts to achieve desegregation in the last three years.

Answer: The Division continues its important work of ensuring that equal educational opportunities are available on a non-discriminatory basis. We remain active in pursuit of the Section's mission and continue to pursue desegregation as a goal. The Division currently is a party to approximately 280 elementary and secondary school desegregation cases. To ensure that districts comply with their obligations, the Division actively reviews these desegregation cases to monitor issues such as student assignment, faculty and staff assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources.

In addition to investigations conducted in districts where full case reviews have been initiated, the Section has opened more than 100 investigations since the beginning of FY 2004 – an average of well over 30 new investigations each year. This compares to the average of 16 new investigations opened by the Section in the last three years of the previous Administration (the only years for which we have such figures). These new investigations include more than 30 concerning specific allegations of desegregation. From the start of FY 2004 to the present, we have obtained litigated relief, entered consent decrees, or engaged in out-of-court settlement agreements in more than 85 cases. The relief we have received includes: eliminating one-race classrooms and schools; ensuring non-discriminatory hiring and promotion of faculty and administrators; improving facilities

and educational opportunities at one-race minority schools; eliminating transfers that hinder desegregation; and eliminating racially separate class superlatives and honors.

The position taken by the United States in *Meredith v. Jefferson County Public Schools* and *Parents Involved in Community Schools v. Seattle School District No. 1* is fully consistent with our historical position that the use of race must satisfy constitutional standards. Copies of the United States' amicus briefs in both cases, which set forth fully its position in these cases, may be found at: http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0908.mer.ami.html (*Parents Involved*) and http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-0915.mer.ami.html (*Meredith*). The briefs of the United States strongly reaffirm the *Brown v. Board of Education* ruling that the state's ultimate objective in crafting public school programs must be to "achieve a system of determining admission to the public schools on a nonracial basis." 349 U.S. 294, 300-01 (1955). The Department recognizes that school districts across the country have a strong interest in providing a high-quality education to all students, and supports their efforts to seek innovative, race-neutral solutions that will improve educational opportunities for all children, including open enrollment plans.

2. In 2005, the Department of Education issued a controversial new policy guidance for use in deciding if colleges and universities are complying with Title IX. Under the guidance, the Department will presume that a college has complied with Title IX and has met female students' interest in sports if the school <u>emails its female students a "model survey" asking about their athletic interests, and students either do not respond to the email, or do not express a desire for more sports activities</u>. This presumption can only be rebutted by specific evidence that there is sufficient student interest in creating a new female sports team, and the burden of proof is on the students or the Department, not on the school. Under the survey, schools no longer need to ask about factors that were previously important, such as coaches' and administrators' opinions and female participation in sports at nearby high schools and recreational leagues, even though these factors are important guides to female students' interest and potential.

a. Did the Civil Rights Division review this guidance before it was issued, and did you have a role in that review?

Answer: We have no record that the Civil Rights Division reviewed this guidance. However, given the nature of what I understand to be the Department's purposes in issuing this guidance--to clarify how surveys can be used appropriately in assessing student interest in particular sports, and to provide a model survey that schools could choose to employ, and not to set new policy--it is not unusual for such a document to be issued without review by our Division.

b. The guidance gives schools an "easy out" under Title IX since many students do not open or respond to email surveys. How can you reconcile this guidance with the statute's goal of providing equality in educational opportunities?

Answer: The Civil Rights Division does not enforce the guidance.

3. The Department of Education also recently issued new Title IX regulations on same-sex education, which greatly expand school districts' ability to provide same-sex education for one gender, without also providing same-sex opportunities to the other gender. These regulations undermine Title IX by providing insufficient protections to prevent schools from providing same-sex educational opportunities based on unfounded gender stereotypes.

a. Did the Civil Rights Division review and approve these regulations before they were finalized?

Answer: The Civil Rights Division reviewed the regulations before they were finalized.

b. If so, please explain why you believe they are adequate to protect against gender discrimination and stereotyping.

Answer: The Department of Education issued these regulations to provide educators with more flexibility to offer additional choices to parents for the education of their children in the form of single-sex classes, extracurricular activities, and schools at the elementary and secondary education levels. At the same time, the amended regulations ensure that single-sex classes, extracurricular activities, and schools are provided in a non-discriminatory manner in compliance with Title IX.

The Title IX statute requires equal educational opportunity regardless of sex. Title IX and its implementing regulations have always permitted single-sex elementary and secondary schools as long as they were operated in a manner that did not discriminate on the basis of sex. Providing added flexibility for the operation of single-sex classes and extracurricular activities is consistent with the intent of Title IX as long as they are offered under conditions that ensure non-discrimination. The amended regulations contain numerous requirements that help to ensure non-discrimination whenever single-sex classes, extracurricular activities, or schools are operated.

For example, under the amended regulations, the Department of Education will consider a wide range of factors in determining whether a particular class, activity, or school is a substantially equal educational opportunity. Such factors include the following: policies and criteria of admission; educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology; the qualifications of faculty and staff; geographic accessibility; the quality, accessibility, and availability of facilities and resources; and intangible features such as reputation of faculty.

Moreover, the amended regulations allow single-sex classes and extracurricular activities only if they are based on an important objective (either to improve the educational achievement of its students through an established policy of providing diverse educational opportunities or to meet the particular identified needs of its students), the single-sex nature of the class or activity is substantially related to achieving the important objective, the important objective is implemented in an evenhanded manner, student enrollment in the single-sex class or activity is completely voluntary, and a substantially equal coeducational class or activity is offered to all other students. The amended regulations allow the operation of public single-sex schools only if they provide students of the excluded sex a substantially equal single-sex or coeducational school.

Finally, the Supreme Court has held that sex-based classifications are permissible under the Equal Protection Clause if they are based on an important governmental objective and the sex-based action is substantially related to achievement of that objective. The Supreme Court also has stated that the justification must be genuine, not hypothesized or invented post hoc in response to litigation, and that it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. Public schools remain subject to these constitutional requirements prohibiting unlawful gender stereotyping.

<u>Appellate Section</u>

1. I'm concerned about the direction of the Division's Appellate Section, which handles appeals of cases filed by the other sections, and files amicus briefs at the appellate level in civil rights cases in which the United States has an interest. In the Bush Administration, the Division has filed only 49 amicus briefs in the courts of appeals, an average of just 8 cases a year, and the number is decreasing. Only six amicus briefs were filed in each of the past three years – far less than the 22 filed by the Section in 1999 during the Clinton years. The appellate amicus filings are a good indicator of the Division's priorities. According to the Division's website, since the political leadership took over the Division, the Appellate Section has filed only one amicus brief in a civil rights case in a court of appeals involving African Americans, and that case was not filed until this year.

a. How do you explain the sharp drop in the Division's amicus filings in civil rights cases?

Answer: During this Administration, the Appellate Section of the Civil Rights Division has an 87% success rate in filing amicus briefs in civil rights cases – as compared to just 61% during the previous Administration. Overall during FY 2006, the Appellate Section filed more briefs than in any year in the Division's recorded history. During FY 2006, the Division's Appellate Section filed 145 briefs and substantive papers in the United States Supreme Court, the courts of appeals, and the district courts. (The total number that I provided previously inadvertently failed to include an amicus brief the Division had filed jointly with the United States Attorney's Office for the Southern District of New York.) Eighty-seven of these

filings were appellate briefs for the Office of Immigration Litigation (OIL). Excluding OIL decisions, the Appellate Section had an overall success rate of 90% during this period, which is the highest success rate the Section has had for any fiscal year since FY 1992. In FY 2006, the Appellate Section filed 17 amicus briefs, an increase over the previous two fiscal years. As of January 5, 2007, the Appellate Section has filed a total of 94 amicus briefs under this Administration.

b. How do you explain the fact that the Division filed just one amicus brief in the courts of appeals in nearly six years in a civil rights case involving African Americans?

Answer: The Civil Rights Division has been active in enforcing the federal civil rights laws on behalf of all Americans, including African Americans. Indeed, during this Administration, the Appellate Section of the Division has been involved in numerous cases upholding the civil rights of African-Americans both on direct appeal and as amicus curiae. Some of these cases include:

- ***United States v. Hobbs and Kratzer*: On July 19, 2006, the United States Court of Appeals for the Fourth Circuit affirmed convictions the Division obtained for violations of 18 U.S.C. 241. Defendants were convicted for agreeing to hang a noose, burn a cross, and throw a dead raccoon on the property of an African-American family that had recently moved into a previously all-white town in North Carolina.**

- ***George v. Colony Lakes Property Owners Ass'n*: On June 16, 2006, the United States District Court for the Northern District of Illinois issued a decision in a Fair Housing Act case. The plaintiffs alleged that the defendant homeowners association amended its bylaws to terminate existing leases and disallow future leases in order to remove all of the African Americans from townhouses in the neighborhood and that the president and various homeowners in the association made statements indicating a racially discriminatory motive for passing the amendment. The district court agreed with the position advocated in an amicus brief filed by the Appellate Section that Section 3617 of the Fair Housing Act prohibits post-acquisition discrimination and denied defendant's motion to dismiss plaintiffs' claims under Section 3617.**

- ***Johnson v. California*: On February 23, 2005, the Supreme Court issued a decision in a case involving a challenge by an African-American prisoner to the policy of the California Department of Corrections of segregating inmates by race in two-person cells for at least the first 60 days of their incarceration. The Court agreed with the position of the United States as amicus curiae that strict scrutiny applies to all government-imposed racial classifications, even in the prison context.**

- ***United States v. Nichols*: On September 14, 2004, the United States Court of Appeals for the Fourth Circuit affirmed a defendant's conviction and sentence for assaulting and terrorizing African-American and Hispanic residents along a**

street in Bessemer City, North Carolina. The defendant was convicted of one count of conspiring to violate constitutional rights under 18 U.S.C. 241 and two counts of interfering with housing rights through the use of force and threat of force, in violation of 42 U.S.C. 3631, for two separate attacks.

- ***Jones v. Donnelly & Sons Co.*: On May 3, 2004, the Supreme Court issued a decision in an employment discrimination suit under 42 U.S.C. 1981 involving claims of racial harassment and discriminatory terminations and transfers. Agreeing with the United States' position as amicus curiae, the Court held that the employees' claims were governed by the four-year federal statute of limitations established by 28 U.S.C. 1658(a), rather than by the two-year state statute of limitations.**

- ***United States v. Charleston County*: On April 29, 2004, the United States Court of Appeals for the Fourth Circuit affirmed the district court's judgment in favor of the United States and four private plaintiffs, who were African-American voters. The court of appeals held that Charleston County's at-large method of electing County Council members violated Section 2 of the Voting Rights Act because it diluted minority voting strength.**

- ***United States v. Fuselier*: On April 20, 2004, the United States Court of Appeals for the Fifth Circuit affirmed a defendant's sentence of 13 years' imprisonment arising from a cross burning at a home rented by three African-American men in Longville, Louisiana. Agreeing with the Division's contentions, the court of appeals upheld the defendant's four level enhancement for serving as a leader or organizer of the criminal activity.**

- ***United States v. May*: On March 4, 2004, in a case personally argued by the Assistant Attorney General for the Civil Rights Division, the United States Court of Appeals for the Fourth Circuit agreed with the Division that the district court should have imposed a stiffer sentence on the perpetrator of a cross burning in Gastonia, North Carolina. On March 28, 2005, the defendant was re-sentenced by another district court judge to one year and one day in prison.**

- ***United States v. Allen*: On August 26, 2003, the United States Court of Appeals for the Ninth Circuit affirmed the convictions of the founders and leaders of a white supremacist organization. The defendants were convicted of violating 18 U.S.C. 245 for chasing a group of African-American and Hispanic individuals out of a public park while wielding weapons and shouting threats and racial slurs.**

- ***Peters v. School Board of the City of Virginia Beach*: On April 22, 2003, the United States Court of Appeals for the Fourth Circuit held that Title VI of the Civil Rights Act of 1964 encompasses claims of retaliation, and thus individuals may bring suit in federal court under Title VI seeking damages against recipients of federal financial assistance that intentionally retaliate against them**

for opposing racial discrimination. Agreeing with the position set forth in the Division's brief as amicus curiae, the court of appeals vacated the district court's dismissal of a claim by a former employee of a school district who alleged that she was terminated because she had opposed discrimination against African-American students.

- ***Commonwealth of Virginia v. Black*: On April 7, 2003, the Supreme Court issued a decision upholding a Virginia statute that makes it a criminal offense to burn a cross with the intent to intimidate any person or group of persons. Agreeing with the position of the United States as amicus curiae, the Court held that the First Amendment does not prohibit a state from banning cross burning with the intent to intimidate.**

- ***United States v. Lee*: On May 5, 2002, the United States Court of Appeals for the Eleventh Circuit affirmed a defendant's sentence of 48 months' imprisonment. The defendant pled guilty to violating 18 U.S.C. 241 in connection with the involuntary servitude of an African-American farm worker.**

- ***Fair Housing of Marin v. Combs*: On April 9, 2002, the United States Court of Appeals for the Ninth Circuit issued an opinion affirming the district court's award of damages to a private, non-profit fair housing organization. Agreeing with the position the Division advocated in its amicus brief, the court held that the organization had standing to bring suit under the Fair Housing Act because the defendant's illegal racial discrimination against African Americans interfered with the organization's efforts to assist individuals in securing non-discriminatory housing.**

Housing Discrimination

1. Hurricane Katrina devastated the historic city of New Orleans and other communities on the Gulf Coast two years ago, and many of its victims have yet to recover. One of the greatest tragedies has been the federal government's failure to do its job to protect the victims of Katrina. When you addressed the United Nations Human Rights Committee in July, you said this:

"The Division is working to ensure that all Americans have an unfettered chance at the American dream by having access to the housing of their choosing. Massive efforts have been made by the Division to protect citizens from discrimination following Hurricane Katrina."

Yet it appears that, for months after Katrina, the Division failed to take action to protect Katrina victims from housing discrimination. That's in stark contrast to the Division's quick response in 1992 after Hurricane Andrew:

-- Immediately after Hurricane Andrew, the Division created a joint task force with HUD and the local U.S. Attorney's office in Miami to operate a housing discrimination hotline.

-- Within a few days of Hurricane Andrew, lawyers from the Division and the U.S. Attorney's office, working with HUD staff in Miami, were handling telephone calls and receiving reports of housing discrimination.

-- The Justice Department filed a case within weeks of Hurricane Andrew, asking for preliminary relief for a Black family that tried to rent an apartment in suburban Fort Lauderdale after being displaced by the hurricane.

-- Within a few days of Hurricane Andrew, the Division also began fair housing testing in areas of South Florida where hurricane survivors were searching for housing, and filed eight pattern or practice suits based on the results of that testing.

To my knowledge, there wasn't the same broad, immediate response after Hurricane Katrina. The Attorney General didn't announce the fair housing initiative, "Operation Home Sweet Home," until February 2005, five months after the catastrophe. That initiative wasn't focused only on Katrina victims, but at least it included some areas recovering from the effects of Katrina and other areas where Katrina victims had relocated. Senator Specter and I worked together to pass the Fair Housing Act Amendments to give stronger protection to victims of housing discrimination, and the Division should enforce the law vigorously. Why didn't the Division immediately set up a task force to protect Katrina victims from housing discrimination, as was done after Hurricane Andrew?

Answer: Hurricane Katrina was the most catastrophic natural disaster in our nation's history. It devastated a 90,000 square-mile area (roughly the size of Great Britain), and resulted in the largest displacement of Americans in our nation's history, forcing more than 270,000 into shelters after landfall. It is estimated to have caused approximately 1,700 deaths and caused an estimated $125 billion in damages. By contrast, Hurricane Andrew caused twenty-three deaths in the United States and an estimated $26.5 billion in damages.

The time period after Hurricane Katrina was focused on exigencies including rescuing thousands of refugees from their underwater homes and providing food, clothing and medication to devastated areas. In addition, the federal government was quickly trying to evacuate residents to a variety of other states across the country. In the early days and weeks after Hurricane Katrina, it was not clear where refugees would relocate.

Immediately after the hurricane, many victims were not in a financial position to seek or secure housing. Thus, the federal government's primary concern was to find housing for these displaced victims. The Department of Housing and Urban Development (HUD) established links on its website for mayors, communities and individuals to offer housing assistance assets for victims. HUD also established two toll-free hotlines to assist Katrina victims and created the Hurricane Recovery and Response Center.

At that time, the Department of Justice detailed attorneys and other staff to HUD's Office of Fair Housing and Equal Opportunity and FEMA. Division architects and attorneys provided extensive assistance to HUD and FEMA concerning the accessibility of FEMA trailers and other short-term housing.

During this time period, HUD properly took the lead to address individual complaints of housing discrimination. The Justice Department has jurisdiction to initiate investigations only of a pattern or practice of violations of the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity placed staff in all disaster recovery centers and made extensive outreach efforts to inform individuals of their housing rights. HUD also implemented accelerated case processing procedures for all fair housing cases generated as a result of the aftermath of Hurricane Katrina.

In February 2006, the Attorney General announced "Operation Home Sweet Home," a concentrated initiative to expose and eliminate housing discrimination in America. This initiative was inspired in part by the plight of displaced victims of Hurricane Katrina, who were suddenly forced to find new places to live all across America. For this reason, Operation Home Sweet Home targets housing discrimination throughout the United States. A key component of this initiative is concentrated testing for housing discrimination in areas recovering from the effects of Hurricane Katrina and those areas where Katrina victims have been relocated. The Division will continue to dedicate renewed energy, resources and manpower to the testing program through investigations and visits designed to expose discriminatory practices. In addition, the Division has expanded our outreach significantly by creating a new fair housing website (http://www.usdoj.gov/crt/housing/fairhousing/index.html), establishing a telephone tip line and a new e-mail address specifically to receive fair housing complaints, and sending outreach letters to over 400 public and private fair housing organizations.

2. How many lawsuits has the Division filed in response to complaints from Hurricane Katrina victims?

Answer: HUD is the agency charged with receiving and investigating fair housing complaints directly from the public. The Division can file lawsuits with regard to such complaints only if it receives a referral from HUD based on the fact that at least one of the parties elects to proceed in federal court. However, the Division has not received any election referrals from HUD based upon complaints filed by Hurricane Katrina victims.

3. How many lawsuits has the Division filed as a result of testing it conducted in Gulf Coast states after Hurricane Katrina?

Answer: The Division has not filed any lawsuits as a result of testing it conducted in Gulf Coast states after Hurricane Katrina. In 2004 and 2005, the Department filed two race discrimination lawsuits based on testing it conducted in states bordering the Gulf of Mexico. Those cases are *United States v. B & S Properties of St. Bernard, LLC* (E.D. La.) and *United States v. Dawson Development Co.* (N.D. Ala.), both of which resulted in favorable settlements or judgments. Notably, the housing that was at issue in the *B & S Properties* case, located in Chalmette, Louisiana, was destroyed by Katrina and has not been rebuilt.

Under the Operation Home Sweet Home initiative, we are conducting fair housing tests in areas recovering from the effects of Hurricane Katrina and in areas where Katrina victims have relocated. We cannot predict what our testing efforts will uncover. But I can assure you that we will prosecute vigorously those who deny housing to others because of race or other prohibited reasons.

As a historical note, the Division's testing in south Florida following Hurricane Andrew did not produce any lawsuits for almost three years after the hurricane. In this regard, it is worth noting the standard for Fair Housing Act litigation by the Department. Absent a referral from HUD, the Department cannot file suit unless it alleges a pattern or practice of discrimination or a denial of rights to a group of persons. This requires more than simply alleging that an isolated act of unlawful discrimination occurred. Proving such a pattern can be difficult and takes time even in a normal housing market. The devastation caused by Hurricane Katrina makes detecting discrimination even more difficult, however, because in many places housing is not available for people of any race.

4. Civil rights organizations have sued on behalf of Katrina victims who suffered racial discrimination in housing. Just last month, an organization filed suit against St. Bernard Parish, Louisiana, which is predominately white, to stop it from enforcing ordinances that allowed housing to be sold only to blood relatives of current residents.
Has the Department intervened in any of these lawsuits in Gulf States on race discrimination in housing? If so, how many, and in which cases?

Answer: It would be inappropriate for me to comment on any matter that may be under investigation or otherwise being considered within the Department. I can assure you that we will continue to monitor developments in the areas affected by Hurricane Katrina and that, when appropriate, we will open investigations and initiate enforcement actions.

With respect to the St. Bernard Parish matter, our understanding is that the Parish suspended the rule after the lawsuit was filed.

<u>**Hate Crimes**</u>

1. After the September 11th attacks, a shameful increase took place in hate crimes against Muslims, Sikhs, and Americans of Middle Eastern descent. Justice Department officials expressed their commitment to investigating and prosecuting these "backlash" hate crimes. But the Department's ability to respond is severely limited by the outdated and unnecessary requirements in existing law. The Department has consistently declined to take a position on legislation to strengthen its ability to prosecute hate crimes. Please provide the Department's current position on the need for federal legislation to strengthen hate crime enforcement.

Answer: Violent crime motivated by prejudice or animus against a particular class or group of citizens should never be tolerated. Not only are they prosecutable as violent crimes under existing laws in every State, but bias-motivated crimes are specifically

prohibited by many states. This Administration is committed to investigating and prosecuting bias-motivated crimes at the federal level to the fullest extent of the law.

In FY 2006, the Division both charged and convicted more defendants in bias-motivated cases than the previous year. In addition, from FY 2001 through FY 2006, the Division brought 39 cross-burning prosecutions, charging a total of 60 defendants. Prosecuting hate crimes remains a priority of the Department. The Civil Rights Division is committed to the vigorous enforcement of our nation's civil rights laws and, in recent years, has brought a number of high profile hate crime cases. Examples of recent prosecutions include:

- ***United States v. Coombs* (M.D. Fla.): In August 2006, a defendant in Florida pleaded guilty to burning a cross in his yard to intimidate an African-American family that was considering buying a house located next door to the defendant's residence.**

- ***United States v. Saldana, et al.* (C.D. Cal.): In August 2006, four Latino gang members were convicted of threatening and assaulting African Americans in a neighborhood that the defendants and their gang members sought to control. All four defendants, members of the notorious Avenues street gang, were convicted of a conspiracy charge that alleged numerous violent assaults against African Americans, including murders that took place in 1999 and 2000. Specifically, the jury found that the defendants caused the death of Christopher Bowser, an African-American man who was shot while waiting at a bus stop in Highland Park on December 11, 2000. The jury also found that the defendants caused the death of Kenneth Kurry Wilson, an African-American man who was gunned down while looking for a parking place in Highland Park on April 18, 1999. Three of the defendants were also convicted of murdering Wilson because he was African American and because he was using a public street, and using a firearm during the commission of a conspiracy and hate crime. All four defendants received life sentences.**

- ***United States v. Oakley* (D.D.C.): In April 2006, the defendant entered a guilty plea to emailing a bomb threat to the Council on American Islamic Relations.**

- ***United States v. Baird* (W.D. Ark.): In April 2006, the defendant entered a guilty plea to burning a cross near the home of a woman whose white daughter's African-American boyfriend was living with her and her daughter. Three additional defendants were charged in May 2006 with participating in the cross burning. The defendant was sentenced in November 2006. Three additional defendants were tried in September 2006, two of whom were convicted on charges of conspiracy and are awaiting sentencing.**

- ***United States v. Nix* (N.D. Ill.): In March 2006, the defendant entered a guilty plea to interference with an Arab-American family's housing rights by igniting an explosive device inside the family's van that was parked near their home.**

- ***United States v. Baalman, et al.* (D. Utah): From December 2005 through January 2006, in Salt Lake City, three white supremacists pled guilty to assaulting an African-**

American man riding his bicycle to work because of his race and because they wanted to control the public streets for the exclusive use of white persons.

- ***United States v. Fredericy and Kuzlik* (N.D. Ohio): In October and November 2006, defendants Joseph Kuzlik and David Fredericy pled guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial family in an attempt to force them out of their Ohio home.**

- ***United States v. Hobbs, et al.* (E.D.N.C.): In a case stemming from a series of racially-motivated threats aimed at an African-American family in North Carolina, four adults were convicted and one juvenile was adjudicated delinquent. Two of the adults were convicted at trial for conspiring to interfere with the family's housing rights and, on July 5, 2005, were sentenced to 21 months in prison. A third defendant pleaded guilty to a civil rights conspiracy charge, and the fourth defendant pleaded guilty to obstruction of justice for his role in the offense.**

- ***United States v. Hildenbrand, et al.* (W.D. Mo.): In April 2004, five white supremacists pleaded guilty to assaulting two African-American men who were dining with two white women in a Denny's restaurant in Springfield, Missouri. One of the victims was stabbed and suffered serious injuries. The defendants were sentenced to terms of incarceration ranging from 24 to 51 months.**

- ***United States v. May* (W.D.N.C.): On March 4, 2004, in a case personally argued by the then-Assistant Attorney General for the Civil Rights Division, the United States Court of Appeals for the Fourth Circuit agreed with the Division that the district court should have imposed a stiffer sentence on the perpetrator of a cross burning in Gastonia, North Carolina. On March 28, 2005, the defendant was re-sentenced by another district court judge to one year and one day in prison.**

An additional bias-motivated murder case is set for trial later this year. In *United States v. Eye and Sandstrom*, attorneys from the Civil Rights Division and the United States Attorney's Office for the Western District of Missouri are prosecuting two men who, according to the indictment, fatally shot an African-American man as he was walking to work in downtown Kansas City.

The Division also has worked in recent years with local prosecutors in an effort to investigate Civil Rights era murders. James Ford Seale was indicted on January 25, 2007, by a federal grand jury for two counts of kidnapping resulting in death, and one count of conspiracy, for his participation in the abductions and murder of two nineteen-year-old African-American men, Henry Dee and Charles Moore, in 1964. According to the allegations in the indictment, the victims in this case were kidnapped by a group of White Knights of the Ku Klux Klan that included James Seale. Dee and Moore were beaten by their captors, then transported and finally forcibly drowned by being thrown into the Old Mississippi River, tied to heavy objects alleged to have included an engine block, iron weights, and railroad ties.

In 2004, the Division announced that federal assistance would be provided to local officials conducting a renewed investigation into the 1955 murder of Emmett Till, a 14-year old African-American boy from Chicago. Till was brutally murdered while visiting relatives in Mississippi after he purportedly whistled at a white woman. Two defendants were acquitted in state court four weeks after the murder. Subsequent to the trial, the defendants admitted their guilt. Both men are now deceased. The investigation showed that there was no federal jurisdiction. Thus, on March 16, 2006, the Justice Department reported the results of its investigation to the district attorney for Greenville, Mississippi, for her consideration. A state grand jury in Mississippi declined to indict the case.

In February 2003, the Division successfully prosecuted Ernest Henry Avants for the 1966 murder of Ben Chester White, an elderly African-American sharecropper in Mississippi who, because of his race and efforts to bring the Reverend Martin Luther King, Jr., to the area, was lured into a national forest and shot multiple times. That conviction was affirmed in April 2004.

Moreover, after September 11, 2001, the Civil Rights Division implemented an initiative to combat "backlash" crimes involving violence and threats aimed at individuals perceived to be Arab, Muslim, Sikh, or South Asian. This initiative has led to numerous prosecutions involving physical assaults, some minor and some involving dangerous weapons and resulting in serious injuries, as well as threats made over the telephone, on the internet, through the mail, and in face-to-face interactions. We have also prosecuted cases involving shootings, bombings, and vandalism directed at homes, businesses, and places of worship. The Department has investigated more than 750 bias-motivated incidents since September 11, 2001. Our efforts have resulted in 32 federal convictions in "backlash" cases. The Department also assisted local law enforcement in bringing more than 160 such criminal prosecutions.

Additionally, the Community Relations Service (CRS) of the U.S. Department of Justice launched proactive information and conflict resolution efforts with Arab American, Muslim, and Sikh communities. CRS created a series of educational law enforcement protocols for federal, state, and local officials addressing racial and cultural conflict issues between law enforcement and Arab American, Muslim American, and Sikh American communities. CRS also created a law enforcement roll-call video titled, "The First Three to Five Seconds," that addresses cultural behaviors and sensitivities, stereotypes, and expectations encountered in interactions and communications with Arab and Muslim communities and recently released a video called "On Common Ground: Understanding Sikh Americans."

CRS established the Arab, Muslim, Sikh Cultural Awareness Train the Trainer Program, which has created a group of community-based Arab, Muslim, and Sikh trainers capable of delivering law enforcement training across the country. This program has been implemented in numerous cities across the nation. As a result of this training effort, as well as direct training of law enforcement by CRS, federal, state, and local law enforcement and

local communities have reported increased cultural knowledge and awareness, a newly developed cooperative spirit within the community, and decreased community anxieties.

CRS instituted a Rapid Response Team, which aims to defuse rumors and prevent escalation of violence when there are allegations of racial profiling or discrimination, or when a hate incident has taken place, by facilitating dialogue between law enforcement and the community and facilitating rapid and accurate dissemination of information.

2. Forty-five states and the District of Columbia have enhanced penalties for hate crimes. The federal criminal code has enhanced penalties for crimes based on race, religion, national origin, gender, disability, or sexual orientation.

> a. Please report to this Committee on the number of federal prosecutions that have gone forward under this provision over the past five years - with the number under each category for crimes based on race, religion, national origin, gender, disability, and sexual orientation.
>
> b. Please also provide information on the overall number of civil rights prosecutions in 2005 and 2006 that involved racial, religious or national origin bias – as well as information on any training in your division on the prosecution of hate crimes.

Answer: Hate crimes are some of most deplorable and offensive acts that the Civil Rights Division encounters in its prosecutions. The Criminal Section, along with its partners in the United States Attorneys' Offices around the country, enforce prohibitions against bias crimes under a variety of civil rights statutes and other Title 18 offenses, depending on the conduct involved. The statistics include charges of conspiracy, murder, and post-September 11, 2001 "backlash" crimes. The Division maintains statistics of prosecutions under these statutes.

Examples of the crimes prosecuted by the Department include:

- ***United States v. Eye and Sandstrom* (W.D. Mo.), where the Department is seeking the death penalty against defendants who allegedly shot and killed an African-American man because of his race and because he was using the street. The government alleges that as the victim walked down the street, the defendants, whom he did not know, drove by and shot at him. Their shots missed the victim, so the defendants allegedly circled the neighborhood until they found him again. One of the defendants got out of the car, rushed up to the victim, and shot him in the chest, killing him. Trial is currently set for August 2007.**

- **In *United States v. Saldana* (C.D. Cal.), four members of a violent Latino street gang were convicted of participating in a conspiracy aimed at threatening, assaulting, and even murdering African-Americans in a neighborhood claimed by the defendants' gang.**

- **In *United States v. Coombs* (M.D. Fla.), a man in Florida pleaded guilty to burning a cross in his yard to intimidate an African-American family who was considering buying the house next door to his residence and two others were convicted after trial of conspiring to do so.**

- **In *United States v. Fredericy and Kuzlik* (N.D. Ohio), two men pleaded guilty for pouring mercury, a highly toxic substance, on the front porch and driveway of a bi-racial couple in an attempt to force them out of their home.**

- **In another case, *U.S. v. Walker, et al.* (D. Utah), three members of a white supremacist organization are charged with assaulting a Mexican American bartender in Salt Lake City at his place of employment. These same defendants allegedly assaulted an individual of Native-American heritage outside another bar in Salt Lake City.**

In the past five years, the Department has filed 97 cases alleging bias crimes and crimes against houses of worship. The Department does not maintain statistics that characterize the type of discrimination (e.g., race, religion, or national origin). In Fiscal Year 2005, the Department charged sixteen defendants with bias motivated crimes and ten defendants with crimes related to houses of worship. In Fiscal Year 2006, the Department charged twenty defendants with bias motivated crimes and two defendants with crimes related to houses of worship.

In response to your request for information regarding training, Section attorneys regularly participate in training and outreach initiatives. For example, several times every year, Section attorneys have provided lectures at the FBI National Academy training for local law enforcement on a variety of topics that have included hate crimes investigation and enforcement; Section attorneys provided hate crime instruction at FBI in-service training directly to FBI agents; Section attorneys provided training to federal prosecutors across the country at the Justice Department National Advocacy Center; and the Section participated in community education programs such as the Annual Hate Crimes and Violence Summit held at the University of Maryland Baltimore County campus and the Oregon Hate Crimes Conference in Portland, Oregon, sponsored by a coalition of groups and entities including the City of Portland, the Portland United States Attorney's Office, and the FBI. Importantly, the Section regularly provides in-house training on prosecuting bias crimes to facilitate attorney development.

In addition, the Criminal Section participates in a regular meeting with officials from the Anti-Defamation League and other members of the Hate Crimes Coalition to discuss the Division's on-going efforts to investigate and prosecute bias motivated crimes.

Written Questions for Wan Kim
Submitted by Senator Russell D. Feingold

1. The Civil Rights Division's Criminal Section has significantly more prosecutors on staff than it did at the close of the last administration. It seems that this increase in staff has been used almost exclusively to prosecute trafficking cases. The prosecution of sex trafficking is a new addition to the Criminal Section's responsibilities, and is clearly a worthy one. What is the Section doing as it moves forward to ensure that prosecution of trafficking does not grow to consume an ever larger portion of the Criminal Section's resources, thus jeopardizing its core responsibilities? Specifically, how will the Division allocate staff and resources within the Criminal Section in order to maintain an appropriate balance of cases in the future?

Answer: The Criminal Section aggressively investigates and prosecutes all civil rights criminal violations. Since 2001, the Criminal Section has increased the staffing of prosecutors by approximately 12 percent. During this time, we have compiled a significant record on criminal civil rights prosecutions. This record includes the ninety-six criminal civil rights prosecutions brought in FY 2004, a record for cases filed in a single year. In the past six fiscal years (FY 2001 - 2006), as compared to the previous six years (FY 1995 - FY 2000), the Criminal Section not only brought more color of law cases, but also has obtained convictions of 50% more color of law defendants.

We also have filed more than six times as many cases of human trafficking, a modern day form of slavery. Our criminal prosecutions span the full breadth of the Division's jurisdiction, and our prosecutors handle all types of cases within our jurisdiction. As we have increased our staff, so have we increased our investigation and prosecution efforts as demonstrated by the increased activity in our overall enforcement program.

2. How is the Civil Rights Division as a whole handling the allocation of staff and resources for areas such as the 9/11 Backlash Initiative that may warrant an increase in resources because they are time-sensitive? What has the Division done specifically with regard to staffing and resources for this Initiative? Did the Division bring on new attorneys to work on this matter or were staffing needs handled solely through distribution of work to existing staff?

Answer: The Division has for the most part used current staff to address challenges such as post-9/11 backlash. While we have brought on certain staff to assist the Assistant Attorney General on coordination and outreach on issues such as 9/11 backlash, at the operational level our current staff and existing structures are well-suited to respond to evolving challenges.

I personally chair a meeting every two months that brings together representatives from various federal agencies with leaders from the Muslim, Arab, Sikh and South Asian communities to address civil rights and civil liberties concerns. These meetings have been highly successful in matching problems with the key government representatives necessary to address them. Additionally, I have spoken at a variety of fora on backlash issues,

including delivering the keynote address at the American Arab Anti-Discrimination Committee annual convention and addressing the Detroit Bridges meeting – a regionally-based interagency meeting co-hosted by DHS, the U.S. Attorney's Office, and the FBI that is similar to the one I hold here in Washington.

Senior Division personnel have also actively reached out to these communities. For example, in 2006, the chief of our Voting Section met with Arab and Muslim leaders in Michigan to learn about their concerns. In addition, an attorney on my staff who is involved with the backlash initiative staffed a booth at the Islamic Society of North America annual convention to listen to community concerns. Also, our Special Counsel for Religious Discrimination spoke at the law student convention of the National Muslim American Lawyer's Association. Attorneys on my staff are in regular contact with Muslim, Arab, Sikh, and South Asian groups to address civil rights issues as they arise.

3. I welcomed the President's pledge to end racial profiling in his first address to a joint Congress back in February 2001, as well as his accompanying charge to Attorney General Ashcroft to actively work with Congress and State and local law enforcement towards this end. And while I applauded the Justice Department's issuance of policy guidance to federal law enforcement agencies banning racial profiling in 2003, this was only a first step as it does not carry the force of law. What has the Division done since 2003 on this matter, which both the President and the former Attorney General declared was a priority? How has DOJ ensured that this priority—ending racial profiling—has not been overlooked or neglected for other matters?

Answer: In June 2003, the Civil Rights Division issued "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies." The Guidance was adopted by the President as executive policy immediately governing all federal law enforcement activities. The Guidance was developed for Federal officials to eliminate racial profiling in law enforcement and emphasizes that "[r]acial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society." The Guidance "in many cases imposes more restrictions on the consideration of race and ethnicity in Federal law enforcement than the Constitution requires."

Upon issuance of the Guidance, then-Assistant Attorney General for the Civil Rights Division Ralph Boyd sent a copy of the Guidance along with a letter to the heads of all Executive Branch agencies and the heads of all federal law enforcement agencies. The letter advises each federal law enforcement agency to review all of its policies and procedures to ensure conformity with the Guidance and to review and, if necessary, revise its training programs. The Assistant Attorney General further offered the assistance of the Civil Rights Division in reviewing any revisions or changes to agency policies, procedures, or training programs.

In April 2004, then-Assistant Attorney General for the Civil Rights Division Alex Acosta sent a follow-up memorandum to federal law enforcement agencies reminding them that the Guidance had been adopted by the President as executive policy and governs all federal law enforcement activities. The memorandum also announced that the Civil Rights Division would be hosting a conference in June 2004 to learn how the Guidance was being implemented. The following month, the Civil Rights Division met with representatives of major law enforcement agencies within the Department of Justice and Department of Homeland Security (DHS) to discuss the specific steps that the agencies had taken to implement the Guidance.

In June 2004, Assistant Attorney General Acosta convened a conference with the general counsels (or their representatives) of federal executive branch law enforcement agencies to review their implementation of the Guidance. In addition to hearing reports from each agency about their implementation of the Guidance, the conference also provided a forum in which agencies were able to discuss promising policies and practices with each other. Several agencies also shared the specific steps they took to revise their training programs and materials to ensure conformity with the Guidance.

The Civil Rights Division also has provided technical assistance to various federal law enforcement agencies. For example, the Division worked with the Drug Enforcement Administration (DEA) to develop a training video to educate DEA personnel on the requirements of the Guidance. This training video is presented to all entry-level Special Agents, Intelligence Analysts, Diversion Investigators, and Chemists. Additionally, this video is mandatory training for DEA field and Headquarters employees. DEA also has issued internal policies prohibiting racial profiling and other forms of discrimination. In 2000, then Acting Administrator Donnie Marshal issued a memorandum to all DEA employees stating that "DEA has not and will not investigate or collect intelligence against any one or any group based on their racial or ethnic makeup" and that race and ethnicity "are never a basis for law enforcement to suspect an individual of wrongdoing." To further emphasize DEA's commitment to fairness in its investigative and enforcement activities, § 6641.11(F) of the DEA Agents Manual states: "Agents, TFOs (Task Force Officers), or any state/local officer participating in a DEA sponsored Task Force will not detain any person based solely on the sex, race, color, or national origin of that person. An individual's sex, race, color, or national origin shall not, by itself, be considered to be indicative of criminal activity."

The Division also has coordinated with the Federal Bureau of Investigation (FBI) about its training of FBI agents on racial profiling issues. For example, from January through April, 2006, the FBI conducted cultural diversity training for executive managers and supervisors. That training included a video vignette on racial profiling and discussion of its prohibited use in traditional law enforcement activities. In addition, the Division reviewed a training tutorial entitled "Guidance Regarding the Use of Race for Law Enforcement Officers" developed by DHS to help explain the DOJ Guidance and DHS policy to its law enforcement officers.

In addition to these activities, the Civil Rights Division has incorporated the Guidance into its regular training courses at the National Advocacy Center (NAC) at the National Advocacy Center in Columbia, South Carolina. Most recently, for example, the Division provided specific training on the racial profiling Guidance at its criminal and civil training sessions held at the NAC in 2006 and already in 2007. The Division over the years also has engaged in outreach efforts with groups such as the International Association of Chiefs of Police to discuss the federal racial profiling Guidance. In 2007, the Division plans to train the legal advisors of federal law enforcement agencies and senior police officers.

4. Please explain how the Division calculates and reports statistics regarding new prosecutions of civil rights cases.

Answer: The Division keeps tracks of statistics in a computer database system. Cases filed are calculated based on the date an indictment is returned by a federal grand jury or a criminal information is filed in federal district court. The database also includes information on the results of each case, the number of cases filed, and the number of defendants charged in the following categories: Color of Law (law enforcement misconduct), Bias Crimes, House of Worship, FACE, Sex Trafficking, and Labor Trafficking.

5. It seems that there are some discrepancies between the statistics on new prosecutions released by the Division and those reported by the Executive Office of U.S. Attorneys. What is your explanation for the differences between these two sets of statistics?

Answer: There may be several reasons for the differences. First, the United States Attorneys' Offices (USAOs) use a different automated data system from the system used by the Division. According to the United States Attorneys' Annual Statistical Report for 2002, USAOs characterize their cases by the most significant or most serious offense, which may or may not be a civil rights offense, even though the Division would characterize the offense as a civil rights prosecution. For example, a case that the Division may report as a trafficking offense may be reported by the USAO as an organized crime offense or a smuggling offense.

Another reason may be the difference between the USAO reporting date and the Division reporting date for events. The Division keeps statistics based on the date an event actually occurs (such as the date an indictment is returned, which would be counted by the Division as the date a case was filed). According to the United States Attorneys' Annual Statistical Report for 2002, USAOs report statistics according to the date an event was recorded or posted in their data base even if the event occurred prior to the start of the reporting period.

A third reason for the discrepancies may be that USAOs are responsible for some civil rights cases over which the Division does not have jurisdiction. Such cases include sex trafficking cases under 18 U.S.C. § 1591 that have only juvenile victims; the Child Exploitation and Obscenity Section of the Criminal Division is the branch within Justice

with responsibility for those cases. Similarly, the Public Integrity Section of the Criminal Division has responsibility for most criminal voting cases.

6. Why is it that some information on the Civil Rights Division's webpage—such as information on the educational opportunities section or the special litigation section—has not been updated for years? Will you commit the resources necessary to ensure that the webpage is an up-to-date, coherent, and accessible source of information on all of the Division's activities?

Answer: The Division's website is a valuable resource as it informs the public, in general, and the civil rights community, in particular, of our priorities and accomplishments. Information provided on the website, including descriptions of recent prosecutions, summaries of federal statutes, copies of settlement agreements, and technical assistance pamphlets, encourages responsible and lawful behavior by both detailing "best practices" for compliance with federal civil rights laws and explaining "what not to do." In working towards that end, in FY 2006, the Division developed new pages on our website describing our enforcement efforts associated with safeguarding the rights of members and veterans of our armed forces, as well as the Attorney General's fair housing initiative, Operation Home Sweet Home.

The public visits the Division's website quite frequently. For example, since its introduction in 2002, the www.ada.gov website has had a 260% increase in visitors, making it one of the top five most visited websites in the Department. In FY 2006, the website served 3.1 million visitors, who generated more than 49 million hits.

Each section within the Civil Rights Division has designated a web content manager who is responsible for ensuring that his or her respective section's site is kept current and provides accurate information. The Division is committed to providing the most current information about the law enforcement efforts of each of our sections. We will work to ensure that our website is a source of up-to-date, coherent, and accessible information regarding our activities.

7. At the hearing and in response to criticisms regarding the drop-off in prosecution of racial discrimination cases and, in particular, cases on behalf of African-Americans, you stated that the priorities of Division have to do with bringing cases "responsibly." You further noted that the Division would bring cases only where you found facts that met "high legal standards." While I agree that the Division should not be capricious with its resources and should not advance unmerited legal arguments, I am concerned that the Division may be backing away from its historic role as the leader in civil rights enforcement. Because of the historic and persistent vulnerability of the minority populations that our civil rights laws are designed to protect, the Division has been called upon at times to advance untested legal theories based on difficult or complicated fact patterns. How do you reconcile your commitment to bringing cases "responsibly" with your responsibility to keep the Division on the cutting edge of civil rights enforcement and your duty to protect the most vulnerable segments of society?

Answer: Having served for more than a decade at the Department of Justice, I very much appreciate my duty to fairly enforce federal laws. Every case brought by the United States must be pursued carefully and responsibly, in full accord with the appropriate legal standards. Both my personal experiences and the experiences of the Division help to reinforce the special responsibilities of a government attorney, as set forth in more detail in the attached letter. *See* Letter from Hon. William E. Moschella to Hon. F. James Sensenbrenner (Apr. 12, 2006).

The duty to bring cases responsibly, however, does not preclude vigorous law enforcement. The Division's record of accomplishments during 2006 demonstrates our strong commitment to civil rights enforcement. For example, the Voting Section filed 18 new lawsuits in CY 2006, more than doubling the average number of lawsuits filed annually during the preceding 30 years. In FY 2006, we obtained a record number of convictions in the prosecution of human trafficking crimes. Human trafficking is a modern day form of slavery, and human trafficking crimes are deplorable offenses of fear, force, and violence that disproportionately affect women and minority immigrants. In FY 2006, the Employment Litigation Section filed as many lawsuits challenging a pattern or practice of discrimination as during the last three years of the previous Administration combined. In FY 2006, the Housing and Civil Enforcement Section filed more cases alleging sexual harassment than in any year in its history. And, in FY 2006, the Disability Rights Section obtained the highest success rate to date in mediating complaints brought under the Americans with Disabilities Act. We will continue to aggressively and responsibly enforce the nation's civil rights laws on behalf of all Americans.

Written Questions for Wan Kim
Submitted by Senator Charles Schumer

1. Protecting the Right to Vote

The right to vote is perhaps our most fundamental civil right, the wellspring of our democracy. Unfortunately, the mid-term election held on November 7, 2006 was marred by many instances of misleading, threatening, and downright criminal behavior that should have no place in our democracy.

a. **Please provide a list of the matters related to the November 7, 2006 election that are or were under investigation by the Civil Rights Division, the Criminal Division, or any other unit of the Department of Justice. For each matter on the list, please include the location of the activity, the nature of the matter, the legal basis for the investigation, and the conclusion reached by the Division.**

Answer:

A. Civil Rights Division - Voting Section

In November 2006, the Department opened multiple phone lines in order to handle calls from citizens with election complaints, as well as an internet-based system for reporting problems. On or about November 7, 2006, the Voting Section received approximately 147 calls and 94 e-mail contacts through its website. These 241 election day contacts raised approximately 351 issues, as some contacts raised multiple issues.

On election day we were able to resolve all issues raised by approximately 36 of the 241 contacts we received. Of the additional contacts, 6 simply provided comments, and 7 persons contacting us sought only election-related information, such as where they should go to vote.

The information provided to us by approximately 150 of these election day contacts did not indicate a possible violation of any of the federal laws the Department enforces. For example, a number of voters called complaining about an isolated mechanical failure of an individual piece of voting equipment.

As a result of pre-election investigation and outreach, the Department assigned more than 800 federal observers and Department monitors to selected polling places across the country. Approximately 470 federal observers from the Office of Personnel Management and 358 Department of Justice staff monitored the general election in 69 jurisdictions in 22 states in areas that we determined warranted scrutiny in order to prevent and document possible violations of voting rights. Election monitoring, among other things, involved receiving

numerous calls and contacts within the course of the site monitoring. Consistent with past practice, Department personnel addressed and documented potentially discriminatory practices regardless of whether they were the subject of a formal complaint.

After Election Day, we reviewed all complaints and determined which matters warranted additional action. We have since initiated new investigations of these matters or incorporated them into ongoing investigations in the relevant jurisdiction. Any comment on these current investigations would be inappropriate at this time.

The Criminal Section of the Civil Rights Division has three matters related to the November 7, 2006, election under investigation. The first is the cross burning in Grand Coteau, Louisiana. The second is the mailing of misleading letters in Orange County, California. The third is the presence of armed men at the polls in Pima County, Arizona. The basis for each investigation is the allegation that persons attempted to intimidate voters because they were exercising their right to vote and because of their race or national origin. The investigations are continuing, and further comment would be inappropriate at this time. We are also monitoring a local investigation into allegations that two residents of Swain County, North Carolina, were forced to apply for absentee ballots and vote a straight Democratic ticket or be evicted from their trailer park.

B. Criminal Division - Public Integrity Section

We are aware of at least 25 criminal matters that are currently under investigation around the country by the Criminal Division and various United States Attorneys' Offices. However, because Department procedures do not require United States Attorneys' Offices to consult with Headquarters before requesting a preliminary investigation of an election fraud allegation, the actual figure may be higher. As these criminal investigations are currently open, it would not be appropriate to comment on them.

Although most election crimes are handled by the Department of Justice's Criminal Division, election crimes motivated by racial animus may be handled by the Criminal Section of the Civil Rights Division.

b. Please provide a list of election crime matters in which racial animus is suspected and that are currently being addressed by your Division's Criminal Section.

Answer: See response to subpart B above.

c. Please specify how many attorneys in your Division's Criminal Section are currently assigned to address election crimes motivated by racial animus.

Answer: The Criminal Section of the Civil Rights Division does not make specific attorney assignments to address election crimes motivated by racial animus. As with most cases in the Criminal Section, attorney assignments are made based on the need(s) of the investigation or case.

2. Organization of Voting Protection Activities

During your appearance before the Senate Committee on the Judiciary on November 16, 2006, you indicated that voting-related enforcement is divided between the Civil Rights and Criminal Divisions due to historic **"**concerns that Federal prosecutors being involved in voter access issues would lead to intimidation of voters at the polls."

a. Federal criminal prosecutors, including Assistant United States Attorneys, reportedly have served as election monitors under the auspices of the Department of Justice. **Please explain how you reconcile deploying prosecutors as election monitors with the historic division between the Civil Rights and Criminal Divisions.**

Answer: A person's status as an Office of Personnel Management employee, an attorney, or a prosecutor does not conflict at all with his or her sole function on election day as an observer or monitor. When Assistant United States Attorneys, prosecutors in the Criminal Section of the Civil Rights Division, or other Department attorneys and staff monitor elections, they are under the supervision and control of the Voting Section of the Civil Rights Division. Such monitoring is focused solely on the enforcement of the federal civil voting rights statutes for which the Voting Section is responsible. Any investigation of federal criminal statutes is kept separate from the enforcement of federal civil voting rights laws and is conducted under the supervision of the appropriate prosecuting office. Non-Voting Section personnel provide necessary resources that allow the Section to investigate and deter discrimination in far more places than would be possible otherwise. These personnel also add to the language skills available to the Section and enhance our ability to obtain evidence of mistreatment of language minority voters.

b. Currently, what Department of Justice Division or official is ultimately responsible for protecting the right to vote in America?

Answer: The Attorney General of the United States bears the ultimate responsibility to enforce the federal laws that protect the right to vote in the United States.

c. As an organizational alternative to this historic division, the Department could unify its voting rights activities under a single manager to provide accountability and programmatic coherence. **In your view, what would be the costs and benefits of unifying the Department of Justice's voter protection activities under a single manager?**

Answer: The Department has historically concluded that the responsibility to ensure voter access, on the one hand, should be distinct from the responsibility to police voter fraud, on the other. For example, the Criminal Division has a great deal of institutional expertise in prosecuting all types of fraud, including voter fraud, while the Civil Rights Division is best situated to deal with issues of discrimination at the polls.

d. Currently, under 18 U.S.C. § 594, the maximum sentence of imprisonment for voter intimidation is 1 year imprisonment. **Do you believe that a higher maximum penalty would be appropriate for this crime?**

Answer: The Department has not been presented with a specific legislative proposal in this regard but will enforce, as appropriate, any legislation that is enacted into law.

<u>3. Alabama Voter Database</u>

This summer, Civil Rights Division attorneys successfully argued that control of Alabama's computerized voter database should be shifted from the Democratic secretary of state to the Republican governor. Creation of a computerized database of voters is required under the Help America Vote Act of 2002. Nevertheless, the Division's stance in this instance was viewed by some as unusually aggressive, and the *New York Times* editorial page characterized this as a case in which "party politics seems to have been a driving force."

a. Please identify which states were tardy in creating their computerized voter databases as required by the Help America Vote Act of 2002.

Answer: **The 55 states and territories covered by HAVA were required to comply with the statewide voter registration database provisions of Section 303(a) of the Help America Vote Act of 2002 by January 1, 2004 (with the exception of one state that did not have voter registration). 42 U.S.C. §§ 15483(a), (d)(1)(A). The vast majority of states sought and received from the U.S. Election Assistance Commission a waiver of compliance from the statutory deadline until January 1, 2006, pursuant to 42 U.S.C. § 15483(d)(1)(B). By January 1, 2006, virtually all states were moving rapidly toward full compliance. The Department brought formal enforcement actions against several states for violations of Section 303(a), including New York in March 2006, Alabama in May 2006, Maine in July 2006, and New Jersey in October 2006. The Department also reached an out-of-court agreement with California over a year ago regarding compliance with Section 303(a) and has worked informally on compliance issues with a significant number of other states.**

b. Please explain your reasons for singling out the Alabama Secretary of State for such aggressive action, given that other states were reportedly also tardy in creating the required voter databases.

Answer: We understood Alabama to rank last among the fifty states in its efforts to comply with HAVA's database requirements. At the time we filed suit, Alabama was

the only state in the nation that had failed to choose the vendor or software designer who would implement the database. Moreover, Alabama officials testified that they could not guarantee compliance by the time of the 2008 primaries - *six years* after HAVA's enactment and despite having accepted $41 million in federal funds allocated expressly for that purpose. The Court's Memorandum Opinion and Order of August 8, 2006, summarizes this failure to comply with federal law:

> **On June 13, 2003 . . . the HAVA Committee was formed to advise Defendant Worley on the development of the state plan and to make recommendations on all aspects of the plan. . . . Defendant Worley issued a request for proposals ("RFP") for a new voter registration system on August 12, 2003. On September 10, 2004, a full thirteen months later, Defendant Worley and the HAVA Committee heard vendor proposals. Deliberating in an admirably non-partisan fashion, the HAVA Committee unanimously recommended a vendor to Defendant Worley on December 14, 2004. . . . On May 27, 2005, after five and one-half months, Defendant Worley chose another vendor, ignoring the unanimous recommendation of the HAVA Committee . . . . Three months later, in August 2005, Defendant Worley terminated negotiations with her choice of vendor and issued a revised RFP requesting further bids. As of the filing of this action in May 2006, for aught that appears in the record, no HAVA-compliant system was being developed.**

The Department nonethless urged voluntary compliance: "Plaintiff maintains that the best outcome, even now, is for Defendants willingly to submit a realistic plan to comply with HAVA." Plaintiff's Response to Defendants' Submission of HAVA Plan, dated July 13, 2006, at 10, filed in *U.S. v. Alabama*, No. 2:06cv00392 (M.D. Ala. May 1, 2006).

In deciding to appoint a special master, the court carefully reviewed the evidence regarding Alabama's lack of compliance. The court held hearings on May 30, July 20, and August 2, 2006. The written evidence included an uncontested factual declaration from the Department of Justice and hundreds of pages of exhibits and documents submitted by both parties, potential interveners, and amici. The court heard oral testimony from a number of witnesses, including a software vendor, counsel for Secretary Worley, and Secretary Worley herself, on more than one occasion. The court invited statements and testimony even from witnesses who were not parties or were not otherwise permitted to join the case.

In its decision, the court explained that it would appoint a special master only because Secretary Worley refused to commit to comply with HAVA before the 2008 presidential primary. As the court noted in its Order,

> **It was against this factual backdrop that the decision to appoint a Special Master was made. In view of her history, the Court simply lacks confidence that Defendant Worley can or will achieve HAVA compliance before the 2008 federal primary election. The Court has repeatedly expressed reluctance to intervene in the affairs of the Secretary of State. The Court must now acknowledge, reluctantly still, that it**

has no other viable alternative than the appointment of a special master to achieve full and timely HAVA compliance.

c. **What do you think the Division could have done differently to avoid charges of partisanship?**

Answer: In the wake of the judicial determination to appoint a special master in this case, as set forth above, charges of partisanship are unfounded. We also note that the Alabama Probate Judges Association supported the appointment of the Governor as the special master. The probate judges are Alabama's local chief elections officials, and more than 75% of them are Democrats.

d. It is troubling when a major newspaper perceives the Civil Rights Division as sacrificing substance to politics. **What specific actions are you taking to demonstrate to the public and to Congress that the Civil Rights Division does not play political favorites?**

Answer: **Having served at the Department of Justice for more than a decade, I am always disappointed to hear unfounded charges of partisanship. Our record of even-handedly enforcing federal law best demonstrates that the Division makes litigation decisions that do not turn on partisan considerations.**

<u>4. Voter Identification Rules</u>

In a November 9, 2006 letter to Senator Edward M. Kennedy, the Office of Legislative Affairs (OLA) did not identify any specific steps the Civil Rights Division has taken to keep voters and poll workers accurately informed about voting rules in states where courts have blocked new voter identification laws. OLA's response to Senator Kennedy noted that the status of voter identification rules is "quite mixed." However, the uncertainty in this area of the law should not negate the need for Civil Rights Division involvement; on the contrary, mixed messages heighten the risk that voters will become confused and discouraged. Without Civil Rights Division involvement, it is conceivable that state legislatures could inhibit voting merely by cynically passing laws that are unlikely to survive scrutiny, simply in order to sow confusion and depress voter turnout.

a. **What specific actions, if any, has the Civil Rights Division taken to assist states in ensuring that confusion over contested identification requirements is not discouraging citizens' exercise of their voting rights?**

Answer: The Voting Section of the Civil Rights Division has increased its outreach to state and local election officials to encourage, among other things, clarity as to election requirements consistent with the federal laws. For example, the Voting Section has addressed the specific potential source of confusion in connection with identification requirements in the State of Georgia, which have gone through many stages. The Department contacted the state promptly to obtain information upon learning of a

mailing that appeared to conflict with a state court order. The state subsequently sent another letter consistent with the state court order to those same voters who had received the initial mailing.

b. What specific actions, if any, does the Civil Rights Division plan to undertake in the future to ensure that citizens are not discouraged from voting in states where identification requirements remain unsettled?

Answer: The Division will respond as appropriate to such circumstances as may arise given its statutory authority.

c. Do you believe that the Civil Rights Division's responsibility extends to ensuring that voters are not discouraged from going to the polls, simply due to confusion over identification requirements?

Answer: The Civil Rights Division is responsible for enforcing the federal laws passed by Congress. Whenever confusion results in a violation of such laws, the Division will vigorously act to enforce the law.

d. In your view, what additional federal legislation or assistance, if any, is needed to ensure that new identification rules, especially if they are contested, do not inhibit voting by qualified citizens?

Answer: The Department will review any proposed legislation and enforce, as appropriate, any statutes within our jurisdiction that are enacted into law.

5. Attrition of Career Attorneys

You stated before the Senate Committee on the Judiciary on November 16, 2006, that "approximately 12 or 13 percent of [Civil Rights Division] attorneys leave each year." However, in previous written responses furnished to members of this Committee, you specified that in FY 2005, the Civil Rights Division lost 63 of its career attorneys. This number represents over 17% of the Division's total attorneys. Many observers attribute this increased attrition rate to low job satisfaction, flagging enforcement of traditional civil rights, and a lack of open dialogue between appointed leaders and career attorneys.

a. What percentage and what number of career attorneys left the Civil Rights Division in FY 2006?

Answer: The average Division attorney attrition rate from FY 2001 through FY 2005 is, as I stated, between 12 and 13 percent. In FY 2005, the attrition rate was approximately 17 percent (16.6 percent for career attorneys), with 63 attorneys, 59 of whom were career attorneys, leaving the Division that year. In FY 2006, the Division's career attorney attrition rate was 14.24 percent, with 47 career attorneys leaving the Division that year.

b. What do you believe to be the reasons for your Division's high attrition rate?

Answer: The average rate of attorney attrition in the Civil Rights Division during this Administration is almost identical to a comparable period of the prior Administration. As such, the average rate of attorney attrition is in line with historical averages.

c. In written responses submitted after your confirmation hearing, you stated that your goal was "to create an environment of hard work, mutual respect, open dialogue and professionalism" and pledged to "work very hard to constantly improve the morale of all employees at the Civil Rights Division." **Since taking over the leadership of the Civil Rights Division, what specific actions have you taken to keep the attrition rate for career civil rights attorneys as low as possible?**

Answer: We make every effort to retain our talented and experienced attorneys. During my tenure as Assistant Attorney General, the Division has created a new Office of Professional Development that is focused on the needs of individual attorneys for training and career resources. The Division also has created an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns. I am in regular contact with the leadership of each Section and work closely with career staff to address any problems that arise. I very much value the expertise and efforts of the Division's dedicated employees.

d. What percentage of the career attorneys now working in the Civil Rights Division were also working for the Division in January of 2001? In other words, what percentage of attorneys now working in the Division have 5 or more years of experience in civil rights enforcement?

Answer: Approximately 50 percent of the attorneys now working in the Civil Rights Division were also working for the Division in January 2001. A greater percentage has "5 or more years of experience in civil rights enforcement," as we also have hired attorneys with a wide variety of backgrounds and experience, including attorneys with civil rights enforcement experience gained through employment in the private sector or in other government agencies.

<u>6. Civil Rights Attorneys Handling Deportation Appeals</u>

On November 4, 2004, Deputy Attorney General James Comey issued a memo asking all of DOJ's litigating components to assist the Office of Immigration Litigation in handling a temporary backlog of deportation cases. The memo stated that help would be needed for only four months. This supposedly temporary arrangement has now been in place for over two years, and yet Civil Rights Division attorneys continue to work on these cases. Critics charge that this diversion of attorney resources is weakening the enforcement of civil rights laws nationally and is contributing to a high attrition rate for experienced civil rights lawyers. Based on information you have provided to this Committee, in both FY 2005 and FY 2006, approximately 60% of appellate briefs filed by Division attorneys were in Office of Immigration Litigation cases. Limiting the Division's civil rights work to a mere 40% of cases appears to be, by definition, a less vigorous enforcement of civil rights at the appellate level.

a. Please explain whether you believe the deportation backlog has hindered civil rights enforcement, and the background and reasons for your conclusion.

Answer: The Division's assistance in handling the extraordinary caseload of immigration briefs has not impacted the Division's civil rights enforcement efforts. Attorneys in all of the Department's litigating Divisions and every United States Attorney's Office are assisting in handling the extraordinary caseload of immigration briefs, and that practice extends to the Civil Rights Division as well. Despite this extra work, Civil Rights Division attorneys have set a number of records in terms of the initiation of cases. Please consider the following records set during 2006:

- **During CY 2006, the Voting Section filed 18 new lawsuits, more than doubling the average number of lawsuits filed annually during the preceding 30 years;**
- **During FY 2006, the Criminal Section obtained a record number of convictions in the prosecution of crimes of human trafficking, a modern day form of slavery involving deplorable offenses of fear, force, and violence that disproportionately affect women and minority immigrants;**
- **During FY 2006, the Employment Litigation Section filed as many lawsuits challenging a pattern or practice of discrimination as during the last three years of the previous Administration combined;**
- **During FY 2006, the Housing and Civil Enforcement Section filed more cases alleging sexual harassment than in any year in its history; and**
- **During FY 2006, the Disability Rights Section obtained the highest success rate to date in mediating complaints brought under the Americans with Disabilities Act (82%).**

The attorneys and staff of the Civil Rights Division - career professionals and political appointees alike – have helped achieve major advancements for all Americans through the fair, faithful, and vigorous enforcement of our federal civil rights laws. We take great pride in these accomplishments.

b. Please explain which area(s) of civil rights enforcement the Appellate Section has deemphasized due to the immigration case backlog that your Division continues to handle.

Answer: As stated above, the Division's assistance in handling the extraordinary caseload of immigration briefs has not impacted the Division's civil rights enforcement efforts, including those of the Appellate Section. Indeed, despite this extra work, the Division's Appellate Section is still doing tremendous work. Overall during FY 2006, the Appellate Section filed more briefs than in any year in the Division's recorded history. During FY 2006, the Division's Appellate Section filed 145 briefs and substantive papers in the United States Supreme Court, the courts of appeals, and the district courts. (The total number that I provided previously inadvertently failed to include an amicus brief the Division had filed jointly with the United States Attorney's Office for the Southern District of New York.) Eighty-seven of these filings were appellate briefs for the Office of Immigration Litigation (OIL).   Excluding OIL decisions, the Appellate Section had an overall success rate of 90% during this period, which is the highest success rate the Section has had for any fiscal year since FY 1992. In FY 2006, the Appellate Section filed 17 amicus briefs, an increase over the previous two fiscal years. As of January 5, 2007, the Appellate Section has filed a total of 94 amicus briefs under this Administration.

c. Can you provide a specific deadline for when civil rights attorneys will be able to stop handling deportation appeals and return to full-time civil rights enforcement?

Answer: The Department will not shirk from its responsibility to enforce the immigration laws passed by Congress. Until OIL has sufficient staff to manage the overwhelming workload, the Department must continue to share this responsibility. The Department is seeking to augment staffing and resource levels such that OIL ultimately will have sufficient staff to assume responsibility for all cases, including the Second Circuit cases formerly handled by SDNY. In this regard, OIL received a significant budget increase for the fiscal year that ended September 30, 2006. In addition, the President has sought another substantial budget increase for OIL in FY 2007 and FY 2008. Finally, the Administration has proposed several much-needed legislative reforms that would help reduce the volume of immigration cases in the federal courts. Because OIL has not received the necessary budget increases and because the legislative reforms have not yet been enacted, OIL is unable to shoulder the entire immigration workload on its own.

7. Attorney General Honors Program

An experienced civil service is the backbone of all our agencies, and the Civil Rights Division can boast of a long tradition of excellence and commitment. Unfortunately, this tradition has been shaken in recent years by evidence that conservative ideology now outweighs traditional civil rights experience. As has been documented in various press reports, the profile and experience of incoming attorneys has changed markedly during the past few years. At this time of year, the Civil Rights Division is usually engaged in hiring promising advocates through the Attorney General's Honors Program. The Civil Rights Division has advertised that it plans to fill 10 positions through the Honors program this year.

a. **Please explain whether you have made any changes to the Honors program hiring process this year in response to concerns about politicization in Civil Rights Division hiring. If so, what were the changes?**

Answer: No changes have been made to the Honors Program this year in response to concerns about politicization. Consistent with my management style and my historical practices, however, I have included a large number of career employees in the Honors Program hiring process.

b. **What future changes, if any, do you intend to make to respond to concerns about politicization of the hiring process?**

Answer: I do not intend to make any future changes in response to concerns about politicization. Consistent with my management style and my historical practices, however, I have included a large number of career employees to participate in the Honors Program hiring process.

8. Enforcing the Freedom of Access to Clinic Entrances Act

The Special Litigation Section of the Civil Rights Division is charged with enforcing the Freedom of Access to Clinic Entrances Act (FACE Act). The FACE Act protects patients and health care providers against threats and obstruction at reproductive health facilities. However, the Internet webpage of the Special Litigation Section does not list a single investigation, complaint filed, or case concluded since 1999 for an enforcement action brought under the Access Act (see http://www.usdoj.gov/crt/split/findsettle.htm, last visited November 21, 2006). Nor does this appear to be simply an issue of untimely website maintenance, since the same webpage highlights recent actions in every other area of Special Litigation responsibility. Your prepared testimony for the oversight hearing of November 16, 2006, also did not mention any steps to enforce the FACE Act among the Division's accomplishments and activities during the past year.

a. **How many complaints under the FACE Act, if any, did the Civil Rights Division receive in each fiscal year from 1999 through 2006, and how were these complaints resolved?**

Answer: The Special Litigation Section of the Civil Rights Division investigates alleged FACE violations under 18 U.S.C. Section 248(c). The Section reviews the factual allegations of each complaint and determines whether further factual inquiry is warranted and if the statutory requirements of the FACE Act may be met. If warranted, the Special Litigation Section also reviews each complaint to determine whether to refer the matter to the Division's Criminal Section, the local United States Attorney's Office, or the FBI. If appropriate, the Section conducts further investigatory action to determine whether a FACE investigation may be warranted.

The Criminal Section of the Civil Rights Division investigates and prosecutes violations of 18 U.S.C Section 248(a), which prohibits the use of force, threats of force, or physical obstruction to interfere with the operation of people and facilities that provide or receive reproductive health services. The Criminal Section opens investigations based on credible information from a variety of sources including victims and the Federal Bureau of Investigation. The Criminal Section does not keep track of the number of FACE complaints it receives.

The Special Litigation Section received nineteen complaints in FY 1999. The Section received sixteen complaints in FY 2000. The Section received twenty-seven complaints in FY 2001. The Section received seventeen complaints in FY 2002. The Section received no complaints in FY 2003. The Section received three complaints in FY 2004. The Section received no complaints in FY 2005. The Section received two complaints in FY 2006. Please see the responses to questions 8(b) and (c) regarding further action taken as a result of FACE complaints.

b. How many investigations under the FACE Act, if any, did the Civil Rights Division undertake in each fiscal year from 1999 through 2006, and what were the results of these investigations?

Answer: Both the Criminal Section and the Special Litigation Section of the Civil Rights Division can initiate investigations under the FACE Act. The Division undertook fifty-seven FACE investigations in FY 1999. The Division undertook thirty-four FACE investigations in FY 2000. The Division undertook twenty-six FACE investigations in FY 2001. The Division undertook sixteen FACE investigations in FY 2002. The Division undertook fifteen FACE investigations in FY 2003. The Division undertook twelve FACE investigations in FY 2004. The Division undertook sixteen FACE investigations in FY 2005. The Division undertook thirteen FACE investigations in FY 2006.

As a result of these investigations, the Criminal Section obtained convictions for twenty-two defendants, and the Special Litigation Section monitored the alleged violations.

c. How many cases under the FACE Act, if any, did the Civil Rights Division file in each fiscal year from 1999 through 2006?

Answer: In FY 1999, the Division filed seven cases. In FY 2000, the Division filed four cases. In FY 2001, the Division filed three cases. In FY 2002, the Division filed two cases. In FY 2003, the Division filed four cases. In FY 2004, the Division filed two cases. In FY 2005 and FY 2006, the Division filed one case per year. So far in FY 2007, the Division has filed three cases.

d. How many attorneys in the Special Litigation Section, or any other unit of the Civil Rights Division, are currently assigned to work on matters related to the FACE Act?

Answer: Attorneys are not generally assigned to enforce any one particular statute. Rather, attorney assignments are made based on the needs of the investigation or case. In addition to any attorneys assigned to a particular investigation or case, the Special Litigation and Criminal Sections each assign a Deputy Chief to coordinate the Sections' FACE Act enforcement efforts and to serve as a liaison to the provider community.

e. **Please explain what specific actions you have taken during your tenure as Assistant Attorney General to ensure that the Civil Rights Division is fulfilling its responsibility for enforcing the FACE Act and protecting the safety of patients and providers at family clinics.**

Answer: The Division has played a pivotal role in enforcing FACE to protect patients and health care providers against threats of force and physical obstruction of reproductive health facilities. The Division has obtained temporary restraining orders and preliminary and permanent injunctions under FACE and has won civil and criminal contempt motions. In addition, the Division works closely with the offices of the United States Attorneys and State Attorneys General by providing technical assistance and conducting joint FACE investigations and prosecutions.

Pursuant to 18 U.S.C. § 248(c)(2), the Division's Special Litigation Section seeks relief, including temporary, preliminary or permanent injunctive relief, civil penalties, and compensatory damages, for FACE violations. In addition, the Criminal Section of the Civil Rights Division provides expert assistance in the prosecution of criminal FACE Act violations across the nation, and the Special Litigation Section provides expert assistance when civil remedies are appropriate.

We identify potential FACE Act violations by constantly monitoring news reports, coordinating with federal law enforcement officers in the field, and communicating regularly with provider groups to ensure that we are informed of incidents that may warrant federal involvement. We have continued to lead the Task Force on Violence Against Reproductive Health Care Providers, working closely with the FBI, ATF, USMS, USPIS and attorneys from the Criminal Division to ensure unified, consistent, and responsive federal involvement when FACE Act violations occur. The Task Force also meets regularly with representatives from several provider groups, including Planned Parenthood Federation of America, the National Abortion Federation, and the Feminist Majority Foundation, to address their concerns.

In January 2007, we secured a conviction against Defendant James Charles Kopp for murdering Dr. Barnett Slepian, a provider of reproductive health services, in violation of FACE and 18 U.S.C. § 924(c) (use of a firearm in the commission of a felony). In other recent cases, we have taken action when offenders have made threats against clinics, damaged their property, obstructed access, or attempted to do so. For example, in December 2006, we secured a conviction in Jacksonville, Florida, against a defendant who told his father that he was going to burn a clinic and was subsequently intercepted

by law enforcement officers when he arrived at the clinic armed with a container of gasoline. In October 2006, a federal indictment was obtained in Des Moines, Iowa, against a defendant who drove his car into a clinic and set it on fire. In September 2006, a federal indictment was obtained against a defendant who made bomb threats to a clinic in Savannah, Georgia. And in May 2006, we secured an indictment against a defendant who obstructed the entry into a clinic in Bellevue, Nebraska, by lying across the doorway while verbally harassing employees and patients seeking entry.

9. Case Tracking

Case tracking is critically important, both for an effective Civil Rights Division and for effective Congressional oversight. Measuring outcomes accurately is a basic tool of management, yet the Division's capacity to do so appears limited. Nelson D. Hermilla, your Division's head of privacy and information operations, stated in an April 8, 2005, letter to the Transactional Records Access Clearinghouse at Syracuse University (TRAC) that the Division's recordkeeping system gives you "no way to obtain either an exact number of complaints that the Criminal Section declined to investigate nor to obtain a complete breakdown by type of complaint[.]"

a. Is the Civil Rights Division now able to track the number and the type of complaints investigated and not investigated?

Answer: The language quoted from Mr. Hermilla's letter refers to TRAC's specific request for a "breakdown of complaints by source" from the Division's Criminal Section. As the letter to TRAC explained, the form in which TRAC requested the data does not reflect the manner in which the Division compiles its information.

The Interactive Case Management (ICM) system is a customized computer database and software system designed to track, count, and measure the work that is performed by each of the Division's ten program-related sections. Due to the unique nature of the work of each section in the Division, ICM procedures vary to some degree among sections, but all sections follow some basic procedures. ICM tracks two types of activity: matters and cases. In general, a "matter" is an issue under investigation, while a "case" is an action in which a complaint has been filed. At the outset of a matter or case, the section's administrative staff enters information about the matter or case into the ICM system. The ICM system notes the attorney(s) assigned to the matter or case; the geographic location, date, and nature of the reported allegation; and any law enforcement or other referring agency. Updates of significant activity are provided throughout the duration of the matter or case. When a matter or case is closed, it is noted as closed in the ICM system.

To the best of our knowledge, the Division has not ever tracked exact numbers of complaints it has declined to investigate.

b. If not, can you commit to a date by which the Division will have this capability?

Answer: Please see response in (c) below.

c. Please describe what steps you have taken, if any, since your confirmation as Assistant Attorney General to improve the Division's systems for tracking and managing complaints, investigations, and cases.

Answer: The Civil Rights Division is actively participating in a Department-wide working group for Litigation Case Management System (LCMS) that is led by the JMD staff. The LCMS is projected to improve the flow of case information across components in the Department. We anticipate that the Division's current case management system will be replaced by LCMS in the next few years.

The Division's current leadership has reiterated the importance of keeping accurate and timely records in the Division's case management system.

d. Please explain how you use or plan to use case tracking systems to verify that the Division is living up to President George W. Bush's public commitments to vigorously enforce the civil rights laws.

Answer: The Division's current case management system, the Interactive Case Management System (ICM), is a computer database and software system designed to track and measure the work that is performed at section level for the Division. The system allows the Division to produce reliable statistics and monitor performance, thereby enabling the Division to meet the requirements of Government Performance and Review Act (GPRA). These requirements include responding to requests from Congress for information about the nature of the Division's work, and justifying resource needs and expenditures at both the Division and Section levels. The Division's management places emphasis on the timeliness, accuracy and consistency of critical data entered into the ICM system so that accurate reports of the matters before the Division are maintained. This system provides a centralized location from which the status of each case may be accessed, and helps ensure that the Division's cases are properly monitored.

Written Questions for Wan Kim
Submitted by Senator Richard Durbin

<u>Personnel issues</u>

1. The July 23, 2006 *Boston Globe* article entitled "Civil rights hiring shifted in Bush era" raises troubling questions about the hiring practices of the Bush Administration's Civil Rights Division within the Department of Justice. The article says:

> "For decades, [career attorney hiring] committees had screened thousands of resumes, interviewed candidates, and made recommendations that were only rarely rejected. Now, hiring is closely overseen by Bush administration political appointees to Justice, effectively turning hundreds of career jobs into politically appointed positions."

The *Boston Globe* article also indicates that efforts are being made to pack the Civil Rights Division with conservative ideologues. It reports that 26% of the lawyers hired into the Civil Rights Division's most controversial sections since 2003 are members of the Federalist Society, and 17% are members of the Republican National Lawyers Association. The article states that several of these new attorneys worked for controversial conservative figures including Kenneth Starr, Ed Meese, and Charles Pickering.

Mr. Kim, many of us are troubled by these developments. What steps have you taken to de-politicize the hiring of career attorneys in the Civil Rights Division?

Answer: We respectfully disagree with many of the assertions made in the *Boston Globe* article. There is no political litmus test used in deciding to hire attorneys in the Civil Rights Division. During the past six years, we have hired people from an extremely wide variety of backgrounds and experiences. We will continue to hire the best attorneys available. It is my goal to ensure that every attorney hired to work in the Civil Rights Division has a demonstrated record of excellence, is a talented attorney consistent with that excellent record, and shares a commitment to the work of the Division.

The *Boston Globe* article ignores salient facts pertaining to the Division's hiring record during this Administration. For example, all five individuals hired as career section chiefs during this Administration had previously served as career attorneys in the Division. These five chiefs have an average of approximately 17 years of experience in the Division, and also had a wide variety of work experiences, including working in the Clinton White House, with the American Civil Liberties Union, and as Special Assistant to Acting Assistant Attorney General Bill Lann Lee. In sum, there is no political litmus test used in deciding to hire attorneys in the Civil Rights Division.

2. Through FOIA requests, the *Boston Globe* obtained information showing that only 42% of lawyers hired into the Civil Rights Division since 2003 had any civil rights experience, while

77% hired in 2001 and 2002 had such experience. And of the 42%, half of those attorneys gained their civil rights experience by defending allegations of discrimination or fighting affirmative action.

Mr. Kim, how do you explain this troubling trend within the Division? Do you share my concern about this trend?

Answer: We respectfully disagree with many of the assertions made in the *Boston Globe* article, nor is it clear what methodology was employed in reaching its conclusions. The Civil Rights Division, like every other component of the Department of Justice, is charged with enforcing the laws passed by Congress. As such, we seek to hire outstanding attorneys with demonstrated legal skills and abilities. The Department considers attorneys from a wide variety of educational backgrounds, professional experiences, and demonstrated qualities. Attorneys from an extremely wide variety of backgrounds and experiences have been hired to work in the Division under this Administration. For example, the Division has hired not only attorneys with significant prior civil rights experience, but also attorneys with other crucial skills, such as a significant record of actual litigation or management experience.

The *Boston Globe* article ignores salient facts pertaining to the Division's hiring record during this Administration. For example, all five individuals hired as career section chiefs during this Administration had previously served as career attorneys in the Division. These five chiefs have an average of approximately 17 years of experience in the Division, and also had a wide variety of work experiences.

3. Please list the total number of attorneys who have worked in the Civil Rights Division each year for the past 12 years. Please provide additional lists of the number of attorneys who have worked in each section of the Civil Rights Division each year for the past 12 years.

Answer: Please see attached chart.

4. Please identify the number of attorneys who departed from the Civil Rights Division in FY 2006.

Answer: Fifty-two attorneys left the Civil Rights Division in FY 2006. Forty-seven of those attorneys were career attorneys.

<u>General enforcement</u>

5. In several sections within the Civil Rights Division, career attorneys are now reportedly required to receive permission from front office political appointees before being allowed to conduct a preliminary or supplemental investigation of a discrimination complaint. This is a change in policy from the Clinton Administration, when career attorneys were permitted to conduct preliminary and supplemental investigations by their section management. The added

layer of bureaucracy imposed by the Bush Administration has slowed the pace of investigations and civil rights law enforcement.

A. Is it true that, in this Administration, the Civil Rights Division front office must approve all preliminary and supplemental investigations? If so, please explain the basis for this new policy. Is the policy in effect for some sections but not others? If so, please explain which sections are covered by this policy and why.

Answer: The Division's leadership plays an important role in approving the dedication of Division resources to pursuing meritorious complaints. The Office of the Assistant Attorney General has an obligation not only to be aware of but to approve investigations to ensure that the Division's resources are being allocated appropriately. That said, the determination of which complaints merit investigation and dedication of the Division's resources is initially made by the sections' career attorneys. All sections of the Division conduct outreach and solicit complaints through a variety of measures, including the Web, telephone hotlines, and communication with advocacy organizations, as well as by referral from other governmental agencies. As the law enforcement responsibility of each section varies, so does the process for initiating an investigation. However, regardless of how a case or matter comes to the Division, career attorneys regularly gather information about potential violations of federal law under the guidance of their section chiefs.

B. For all sections that are required to have preliminary and supplemental investigations approved by the Civil Rights Division front office, what is the average length of time between when a request is made to the front office to begin a preliminary or supplemental investigation, and when the request is approved? Please provide data for the past six years.

Answer: The process for Assistant Attorney General approval of a sections chief's recommendation to initiate an investigation exists to ensure that the Division is using its resources effectively and has the opportunity to coordinate its efforts with other Department components, such as the FBI and the United States Attorneys' offices. Every effort is made to review a section chief's recommendation in a timely fashion, but there is no set time period for its review. The time required for a thorough review depends on various factors, including the number and complexity of the issues raised and the amount of other cases or matters also under review. However, if a case or matter is time-sensitive, the Office of the Assistant Attorney General will expedite its review as necessary.

<u>Housing discrimination</u>

6. Mr. Kim, you testified that in FY 2006 the Civil Rights Division filed two testing cases involving housing discrimination. Did either of these cases included allegations of race discrimination? Please provide a summary description of each case.

Answer: Two cases filed by the Housing and Civil Enforcement Section in the Civil Rights Division in FY 2006, *United States v. Douglass Management, Inc.* (D.D.C.) and *United States v. Fountainbleau Apartments* (E.D. Tenn.), were based on evidence developed through its testing program. In addition, the Housing and Civil Enforcement Section filed nine cases involving race discrimination in FY 2006 and has filed four such cases thus far in FY 2007.

In the *Douglass Management* case, the Division alleged that the owners and managers of a Washington, D.C., apartment complex refused to rent apartments to persons who use guide dogs. This was the first case ever brought based on evidence generated by our testing program alleging discrimination against guide-dog users. The case was resolved by consent decree. The defendants were required to adopt non-discriminatory policies and practices, pay $20,000 in a civil penalty, and pay up to $25,000 in damages to persons harmed by the discrimination.

In the *Fountainbleau* case, the Division alleged that the owners and managers of an apartment complex in East Ridge, Tennessee, refused to rent apartments to families with children. That case is pending.

7. The Civil Rights Division claims to have a significant new initiative ("Operation Home Sweet Home") to use testing practices to root out housing discrimination. However, the Civil Rights Division filed just one testing case involving housing discrimination each year over the past three years. Prior to 2001, the Division was filing between 5-10 testing cases involving housing discrimination each year. Of those cases, 2-5 each year involved claims of race discrimination. How do you explain this decrease in testing cases being filed by the Bush Administration's Civil Rights Division?

Answer: The Division is committed to utilizing its testing program fully and effectively to uncover and prosecute unlawful discrimination. Indeed, we have ramped up our efforts to do so. Since the February 2006 inception of the Attorney General's fair housing initiative, Operation Home Sweet Home, the testing program's resources have been increased and the program, in turn, has been increasing the quantity and improving the quality of its testing. We plan to conduct more tests in this fiscal year than in any past year in the testing program's history.

Since the testing program's inception in 1991, during the first Bush Administration, the Division has filed eighty cases based upon evidence developed by its testing program. Of those eighty cases, fifty-two alleged race discrimination, twenty-seven alleged familial status discrimination, twenty-four alleged disability discrimination and three alleged national origin discrimination. (Please note that some cases alleged discrimination on more than one ground.)

Over the past three fiscal years, the Division has filed five cases based upon evidence developed by its testing program, including three cases alleging race discrimination (one of which was a public accommodations case), one alleging disability discrimination against guide-dog users and one alleging familial status discrimination. We have resolved successfully through settlement or trial all of those cases, except the pending familial status case.

There are several reasons for the historical pattern of case filings based upon testing program evidence. During the program's early period, the testing focused on potential race discrimination and as a result virtually all of the cases filed through FY 1997 include allegations of racial discrimination. The testing and the resulting litigation had their intended effect. Many apartment management companies and real estate companies across the country implemented fair housing training programs for their employees and monitored their employees' performance. The discrimination in today's housing environment often tends to be more subtle and more difficult to detect through testing.

In addition, in the mid-1990s, the Division expended considerable testing resources to determine whether there was compliance with the Fair Housing Act's accessibility requirements for multi-family housing. That testing resulted in the filing of twenty-one cases alleging violations of those requirements between the start of FY 1998 and January 2001. During this same period, there was also a significant decrease in the number and percentage of testing cases being filed alleging race discrimination.

We have learned that there are better methods of identifying significant violations of the Fair Housing Act's multi-family housing accessibility requirements. Accordingly, the Division has been able to increase the number of accessibility cases filed, from twenty-nine in CY 1995 – CY 2000 to forty-five during CY 2001 – CY 2006, while freeing up testing resources for other uses.

During this Administration, we have used the testing program in new ways. For example, we have tested for the first time to detect discrimination against guide-dog users and wheelchair users. In FY 2003, we filed and settled the first case using evidence developed by the testing program that alleged that a retirement community discriminated against wheelchair users. In FY 2006, we filed and settled the first case using evidence developed by the testing program that alleged rental discrimination against guide-dog users. In addition, testing to detect racial discrimination remains a priority. Indeed, a major focus of the Attorney General's fair housing initiative, Operation Home Sweet Home, is the use of our testing program to detect racial discrimination in housing.

8. You testified that in FY 2006, the Division filed three cases alleging that multi-family housing was not designed and constructed in compliance with the Fair Housing Act's requirements for accessible housing. In FY 2005 and FY 2004, the Division filed 12 such cases. How do you explain this decrease in disability case filings from 12 per year to only three?

Answer: During this Administration, the Division has filed forty cases alleging that multi-family housing was not designed and constructed in compliance with the Fair Housing Act's requirements for accessible housing, including significant cases covering dozens of housing complexes. Our settlements in FY 2005 alone created more than 12,000 new accessible housing opportunities – a number that is almost three times greater than the entire number of accessible housing opportunities created during the eight years of the previous Administration.

Inevitably, there will be some variation in the number of cases filed in one fiscal year compared to another. One source of variation stems from the number of HUD referrals pursuant to Section 812 of the Fair Housing Act ("election referrals") that involve design and construct violations, a matter over which the Division has no control. The Division received fewer election referrals of design and construct cases in FY 2006 than in FY 2004 and FY 2005. Excluding such cases based upon HUD election referrals, the Division filed between three and five design and construct cases in each fiscal year – four cases in 2004, five cases in 2005 and three cases in 2006.

There has been no letdown in our design and construct work. We continue to investigate allegations of design and construct violations and prepare to file suit when that is warranted. We resolved five cases in FY 2006 through consent decrees, and in a sixth case, the settlement was filed before the end of the fiscal year and entered by the court shortly thereafter. Finally, following the banner year in design and construct settlements in FY 2005, noted above, we needed to commit additional resources in FY 2006 to ensure compliance with those settlements, to make the promise of new, accessible units a reality.

9. In FY 2005 the Civil Rights Division filed two pattern or practice housing race discrimination cases under the Fair Housing Act, in FY 2004 it filed three such cases, and in FY 2003 it filed five.

A. How many pattern or practice housing discrimination cases alleging race discrimination were filed in FY 2006?

Answer: In FY 2006, the Division filed three pattern or practice housing discrimination cases alleging race discrimination. In FY 2005 and FY 2004, it filed three cases per year. In FY 2003, it filed six cases.

B. The trend appears to be a steady decrease each year in filing pattern or practice race discrimination cases under the Fair Housing Act. Prior to

2001, the Division filed between 5-10 such cases per year. How do you explain this continuing decrease during the Bush Administration?

Answer: We are bringing significant cases alleging patterns or practices of racial discrimination in violation of the Fair Housing Act. For example, in October 2006, we filed and settled a case alleging that one of the largest residential and small business lenders in the Gary, Indiana, metropolitan area discriminated on the basis of race and national origin by refusing to provide its lending services to residents of minority neighborhoods. In addition, a major focus of the Attorney General's fair housing initiative, Operation Home Sweet Home, is the use of our testing program to detect racial discrimination in housing.

During this Administration, thirty-one percent of the Division's Fair Housing Act cases have alleged race discrimination. In addition, the Division has brought many more pattern or practice cases alleging sexual harassment or inaccessible multi-family housing than in the past.

The share of the Division's Fair Housing Act work addressing racial discrimination is consistent with the share of fair housing election referrals we have received from HUD. Since 2001, 26% of HUD's election referrals to the Division have involved race discrimination claims, reflecting an approximately 20% decrease from the election referrals during the 1996 to 2000 period.

Moreover, cases brought by fair housing groups reflect roughly the same proportion of fair housing cases alleging racial discrimination as reflected in the Division's cases. One study reported that between 2000 and 2005, 32.5% of all cases filed had a race discrimination claim as the primary basis for the lawsuit. That same study reported that, of the open cases at the end of 2005, 26% had a race discrimination claim as the primary basis for the lawsuit.

10. Professor Lauren E. Willis, who previously worked as a trial attorney in the Civil Rights Division, wrote an op-ed in the October 8, 2006 *Washington Post* in which she proposed a five-step action plan to decrease racial disparities in the home loan market. Does the Civil Rights Division agree with this action plan? What role, if any, do you believe the Civil Rights Division can play in helping to carry out the five steps in Professor Willis's proposal?

Answer: The Division has vigorously enforced the Fair Housing Act and the Equal Credit Opportunity Act. For example, we have brought and resolved several redlining cases in the past six years, including one a few months ago against Centier Bank in Indiana for refusing to provide its lending services to residents of minority communities. We also have utilized loan-pricing data first made available in 2005 under the new Home Mortgage Disclosure Act reporting requirements to open investigations of loan-pricing discrimination.

The Division does not have authority to regulate institutions that engage in home lending. Proposals aimed at "making price shopping for home loans easier for all Americans" appear to relate to issues now being considered by the Department of Housing and Urban Development pursuant to its responsibilities concerning the Real Estate Settlement Practices Act (RESPA). Other proposals appear to fall within the ambit of the bank regulatory agencies.

As a general matter, however, the Division does support consumer education, which is a common component of our fair lending settlements. In addition, several years ago, we joined with our partner agencies on the Inter-Agency Fair Lending Task Force to publish a pamphlet designed to help consumers shop wisely for home loans, called "Putting Your Home on the Line is Risky Business." This pamphlet is available at http://www.usdoj.gov/crt/housing/brochure_rb.htm.

Employment discrimination

11. One of the witnesses at the November 16, 2006 hearing, Joe Rich of the Lawyers' Committee for Civil Rights, indicated in his written testimony that, in two major Supreme Court cases, the Bush Administration has sought to have the Court endorse a very restrictive view of Title VII, the nation's primary employment discrimination law. The two cases are *Burlington Northern and Santa Fe Railway Co. v. White* and *Ledbetter v. Goodyear*.

A. Did the Civil Rights Division agree with the position advocated by the Solicitor General's office in the *Burlington Northern* case? If not, please explain the position advocated by the Division.

Answer: The Department has a long-standing policy against the disclosure of internal deliberations. In the amicus brief that it filed with the Supreme Court in this case, the United States argued that the term "discriminate" in Title VII's anti-retaliation provision must be read consistently with the statute's core anti-discrimination provision, which prohibits discrimination on the basis of race, sex, national origin, or religion. As discussed more fully in its amicus brief, the United States determined that this position was the correct interpretation based on the text and structure of Title VII. A majority of the Circuits that had decided the issue – the First, Second, Third, Fourth, Sixth, and Eleventh – had reached the same conclusion. A copy of the United States' amicus brief, which sets forth fully its position in this case, may be found at: http://www.usdoj.gov/osg/briefs/2005/3mer/1ami/2005-0259.mer.ami.html. The Department acknowledges and accepts the Supreme Court's decision in this case, and as with all decisions of the Supreme Court the Department will follow the Court's precedent.

B. Regarding the second case, Mr. Rich stated that "in *Ledbetter v. Goodyear* the civil rights community was forced to advocate for the EEOC's position regarding the statute of limitations in Title VII disparate pay cases, because of DOJ's failure to support EEOC regulations." Why did the Justice Department refuse to support the EEOC regulations? What was the Civil Rights Division's role in this decision?

Answer: As stated above, the Department has a long-standing policy against the disclosure of internal deliberations. In the amicus brief that it filed with the Supreme Court in this case, the United States argued that Supreme Court precedent forecloses Title VII claims that are based on the theory that paychecks issued in the limitations period perpetuate time-barred acts of discrimination. The brief of the United States explained that the Supreme Court's decision in *Bazemore v. Friday*, 478 U.S. 385 (1986), is not to the contrary, as *Bazemore* simply permits the challenging of paychecks issued pursuant to an ongoing policy of intentional discrimination. A copy of the United States' amicus brief, which sets forth fully its position in this case, may be found at: http://www.usdoj.gov/osg/briefs/2006/3mer/1ami/2005-1074.mer.ami.html.

C. David Palmer, the chief of the Employment Litigation Section, has recently been nominated by the President to serve as a commissioner on the EEOC. What positions did Mr. Palmer recommend be taken by the Justice Department in *Burlington Northern and Santa Fe Railway Co. v. White* and *Ledbetter v. Goodyear*?

Answer: Pursuant to the Department's usual practice, the Office of the Solicitor General determined the position of the United States in these cases after consultation with other Department components, including the Civil Rights Division and, in *Ledbetter*, the Civil Division. The Department has substantial confidentiality interests in our deliberative process relating to these matters.

12. The Bush Administration has filed many fewer pattern or practice cases and disparate impact cases on behalf of African Americans than the Clinton Administration. Were there any instances in which the Employment Litigation Section management recommended bringing a pattern or practice or disparate impact case on behalf of African Americans, and the political appointees in the Civil Rights Division front office rejected the recommendation? If so, please explain.

Answer: The Division has been active in enforcing the federal civil rights laws on behalf of all Americans, including African-Americans. Indeed, during this Administration, the Division has filed scores of cases on behalf of African-American victims. Some examples are:

- **In November 2006, the Division filed a complaint against Tallahassee Community College (TCC) alleging that TCC failed to select an African American applicant for the position of HomeSafenet Trainer because of the**

applicant's race in violation of Title VII. Under a court-approved consent decree entered on November 7, 2006, TCC agreed to offer the applicant $34,363 in back pay and accumulated interest.

- **In July 2006, the Division filed suit against the City of Chesapeake, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination on the basis of race and national origin in violation of Section 707 of Title VII of the Civil Rights Act of 1964 by using a mathematics test to screen applicants for entry-level police officer positions in a manner that had an unlawful disparate impact against African-American and Hispanic applicants.**

- **In July 2006, the court entered a consent decree resolving our suit against the City of Virginia Beach, Virginia, alleging that the City had engaged in a pattern or practice of employment discrimination in violation of Title VII through its use of a mathematics test that disproportionately excluded African-American and Hispanic applicants for the position of entry-level police officer. The decree alters the City's method for selecting entry-level police officers in a way that will eliminate the disparate impact of the mathematics test. In addition, the decree requires the City to provide remedial relief, including money damages, priority job offers, and retroactive seniority, to identifiable African-American and Hispanic victims of the challenged test.**

- **In July 2006, the Division filed a complaint against the City of Euclid, Ohio, alleging that the mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens in violation of Section 2 of the Voting Rights Act. In its investigation, the Division found that while African-Americans composed nearly 30% of Euclid's electorate, and although there had been eight recent African-American candidacies for the city council, not a single African-American candidate had ever been elected to that body. Further, the Division found that in seven recent city council elections, white voters voted sufficiently as a bloc to defeat the African-American voters' candidates of choice.**

- **In 2003, the Division successfully settled a racial discrimination and retaliation lawsuit against the city of Fort Lauderdale, Florida. The lawsuit alleged that the city of Fort Lauderdale violated Title VII by denying an African-American employee a promotion because of his race. The lawsuit further alleged that the city retaliated against the employee when he complained that he had been denied a promotion for discriminatory reasons.**

- **In 2002, the Division filed a lawsuit under Section 208 of the Voting Rights Act that was the first ever to protect the voting rights of Haitian Americans.**

- **In October and November 2006, defendants Joseph Kuzlik and David Fredericy pled guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial couple in an attempt to**

force them out of their Ohio home. Fredericy was sentenced to 33 months in prison, and Kuzlik was sentenced to 27 months in prison.

- **In August 2006, the Division obtained a verdict against a former apartment manager for discrimination on the basis of race as a result of his refusal to rent to African-Americans in Boaz, Alabama. The Division conducted an investigation of the manager and his employer through the use of fair housing testers. The defendant was ordered to pay a civil penalty of $10,000. Earlier in the year, the defendant's employer agreed to pay a civil penalty of $17,000 and compensatory damages of $32,700 to individuals who were subjected to the alleged discriminatory housing practices.**

- **In December 2005, the Division filed a complaint alleging that a Wisconsin nightclub violated Title II by discriminating against African-Americans. According to our complaint, nightclub employees falsely told African-Americans they could not enter because a private party was underway or the club was full to capacity, while at the same time admitting whites. On December 29, 2006, the court approved a consent decree settling the case and requiring the nightclub to adopt new entry procedures designed to prevent racial discrimination, to pay for periodic testing to assure that discrimination does not continue, to post a prominent sign at the entries advising that the nightclub does not discriminate on the basis of race or color, to train its managers, to send periodic reports to the Department, and to adopt an objective dress code approved by the Department.**

- **In 2004, the Division entered into a consent decree resolving allegations that Cracker Barrel Old Country Store, Inc., a nationwide family restaurant chain, accommodated a severe and pervasive pattern of racial discrimination at its restaurants, including allowing its servers to refuse to serve African-American customers and treating such customers differently in terms of seating, service, and responsiveness to complaints. Cracker Barrel agreed to implement far-reaching policy changes and training programs to remedy these violations.**

- **Since 2001, the Division has obtained four consent decrees involving redlining of predominantly African-American neighborhoods by major banking institutions. The first, filed and resolved in 2002, involved a major bank in Chicago that will invest more than $10 million and open two new branches in minority neighborhoods to settle a lawsuit alleging that it had engaged in mortgage redlining on the basis of race and national origin. In May 2004, the Division obtained a consent decree requiring a bank to invest $3.2 million in small business and residential loan programs and to open three new branches in the City of Detroit. This was the first redlining case the Division has ever brought alleging discrimination in business lending. In July 2004, the Justice Department filed and resolved a lawsuit against another bank in Chicago. The suit alleged that the bank intentionally avoided serving the credit needs of residents and small businesses located in minority neighborhoods. The bank has agreed to invest $5.7 million and open new branches in these neighborhoods. On**

October 13, 2006, the Justice Department filed a complaint alleging that Centier Bank discriminated on the basis of race and national origin by refusing to provide its lending services to residents of minority neighborhoods in the Gary, Indiana, metropolitan area in violation of the Fair Housing Act and the Equal Credit Opportunity Act. The suit was resolved by a consent decree entered on October 16, 2006, which requires the Bank to: invest a minimum of $3.5 million in a special financing program for residential and CRA small business loans; commit at least $375,000 in targeted advertising; invest $500,000 to provide credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses of African-American and Hispanic areas and to sponsor programs offered by community or governmental organizations engaged in fair lending work; open or acquire at least two full service offices within designated African-American neighborhoods; expand an existing supermarket branch in a majority Hispanic neighborhood to provide full lending services; provide the same services offered at its majority white suburban locations to all branches regardless of their location; train employees on the requirements of the Fair Housing Act and Equal Credit Opportunity Act; as well as other remedial relief.

- **On January 25, 2007, the federal district court in Jackson, Mississippi, unsealed an indictment charging James Seale, 71, with two counts of kidnapping resulting in death and one count of conspiracy in connection with the 1964 abductions and murders of 19-year-old African-Americans Charles Moore and Henry Dee. Seale, a former member of the White Knights of the Ku Klux Klan, is charged with having acted in concert with fellow Klansmen to kidnap Moore and Dee, beat them, transport them across state lines, and murder them by attaching heavy weights to them and throwing them, still alive, into the Old Mississippi River. If the defendant is convicted, he will face a maximum sentence of life imprisonment on each count.**

- **In 2004, the Division announced that federal assistance would be provided to local officials conducting a renewed investigation into the 1955 murder of Emmett Till, a 14-year old African-American boy from Chicago. Till was brutally murdered while visiting relatives in Mississippi after he purportedly whistled at a white woman. Two defendants were acquitted in state court four weeks after the murder. Subsequent to the trial, the defendants admitted their guilt. Both men are now deceased. The investigation showed that there was no federal jurisdiction. Thus, on March 16, 2006, the Justice Department reported the results of its investigation to the district attorney for Greenville, Mississippi, for her consideration. A state grand jury in Mississippi declined to indict the case.**

- **In April 2004, five white supremacists pleaded guilty to assaulting two African-American men who were dining with two white women in a Denny's restaurant in Springfield, Missouri. One of the victims was stabbed and suffered serious**

injuries. The defendants were sentenced to terms of incarceration ranging from 24 to 51 months.

- **In February 2003, the Division successfully prosecuted Ernest Henry Avants for the 1966 murder of Ben Chester White, an elderly African-American farm worker in Mississippi who, because of his race and efforts to bring the Reverend Martin Luther King, Jr., to the area, was lured into a national forest and shot multiple times. That conviction was affirmed in April 2004.**

- **In September 2006, two defendants were convicted of conspiring to interfere with the housing rights of a family that included an African American by burning a cross in front of their house. In April 2006, an additional defendant pleaded guilty to the same offense.**

- **A defendant pleaded guilty on August 16, 2006, to intimidating and interfering with an African-American family that was negotiating for the purchase of a house by burning a cross on the property adjacent to the house.**

- **On April 13, 2004, a defendant pleaded guilty to building and burning a cross in the front yard of an African-American couple's home; that defendant was sentenced to 18 months of incarceration.**

- **In a case stemming from a series of racially-motivated threats aimed at an African-American family in North Carolina, four adults were convicted and one juvenile was adjudicated delinquent. Two of the adults were convicted at trial for conspiring to interfere with the family's housing rights and, on July 5, 2005, were sentenced to 21 months in prison. A third defendant pleaded guilty to a civil rights conspiracy charge, and the fourth defendant pleaded guilty to obstruction of justice for his role in the offense.**

- **On March 4, 2004, in a case personally argued by the then-Assistant Attorney General for the Civil Rights Division, the United States Court of Appeals for the Fourth Circuit agreed with the Division that the district court should have imposed a stiffer sentence on the perpetrator of a cross burning in Gastonia, North Carolina. On March 28, 2005, the defendant was re-sentenced by another district court judge to one year and one day in prison.**

With regard to the request regarding recommendations from the Employment Section, disclosure of the requested information would violate the Department's long standing policy against revealing internal deliberations.

13. Please provide information regarding all lawsuits brought each year by the Civil Rights Division's Employment Litigation Section over the past six years, including a brief description of each suit, the status or resolution of each suit, and the number of victims at issue in each suit.

Answer: Since January 1, 2001, the Employment Litigation Section has filed the following lawsuits:

United States v. State of Delaware (D. Del.)

On January 10, 2001, we filed a complaint in the United States District Court for the District of Delaware against the State of Delaware, pursuant to Section 707 of Title VII. The complaint alleged that the defendant's use of certain written examinations for the selection of entry-level state troopers had an unlawful disparate impact against blacks and was not job-related and consistent with business necessity, as required by Title VII. This suit was brought to trial and successfully prosecuted by the Division.

United States v. Village of Cuba, New Mexico (D.N.M.)

On January 12, 2001, we filed a complaint in the United States District Court for the District of New Mexico against the Village of Cuba, New Mexico, pursuant to Section 706 of Title VII. The complaint alleged that the defendant discriminated against three female charging parties by failing or refusing to increase their hourly compensation at the same rate as the increase in hourly compensation given to male hourly employees. This suit was resolved through the entry of a consent decree in November 2001.

United States v. Matagorda County, Texas, and Sheriff James D. Mitchell (S.D. Tex.)

On January 12, 2001, we filed a complaint in the United States District Court for the Southern District of Texas against Matagorda County, Texas, and Sheriff James D. Mitchell pursuant to Section 706 of Title VII. The complaint alleged that the Defendants discriminated against a charging party on the basis of his race. This case was resolved through the entry of a consent decree on January 19, 2002.

United States v. City of Sulphur, Oklahoma (E.D. Okla.)

On January 18, 2001, we filed a complaint in the United States District Court for the Eastern District of Oklahoma against the City of Sulphur, Oklahoma, pursuant to Section 706 of Title VII. The complaint alleged that the defendant discriminated against a charging party on the basis of his national origin when it refused to employ him as a supervisor in the city's sanitation department. This case was resolved through the entry of a consent decree on February 23, 2001.

United States v. City of Bastrop, Louisiana (W.D. La.)

On January 19, 2001, we filed a complaint in the United States District Court for the Western District of Louisiana, pursuant to Section 706 of Title VII. The complaint alleged that the defendant subjected the charging party to racial and sexual

harassment while she was employed by the City. This case was resolved through the entry of a consent decree on October 1, 2001.

United States v. New York City Housing Authority (S.D.N.Y.)

On May 31, 2001, the Assistant Attorney General for the Civil Rights Division authorized the United States Attorney's Office for the Southern District of New York to file a complaint against the New York City Housing Authority, pursuant to Section 706 of Title VII. The complaint alleged that the complainants, female participants in the City's Work Experience Program (WEP), were subjected to a hostile work environment on the basis of race or sex and that one of the complainants was retaliated against because of her complaints of sexual harassment. This case was resolved through the entry of a consent decree on May 12, 2006.

United States v. Northwest New Mexico Regional Solid Waste Authority (D.N.M.)

On March 20, 2002, we filed a complaint in the United States District Court for the District of New Mexico against the Northwest New Mexico Regional Solid Waste Authority (Authority), pursuant to Section 706 of Title VII. The complaint alleged that the Authority racially and sexually harassed a Native-American female and other similarly situated females. The complaint also alleged that the Authority created a work environment that was so racially and/or sexually hostile that female employees were forced to resign from their jobs. This case was resolved through the entry of a consent decree on February 3, 2003.

United States v. New York City Department of Parks and Recreation (S.D.N.Y.)

On June 19, 2002, a complaint, authorized by the Assistant Attorney General of the Civil Rights Division, was filed by the United States Attorney's Office for the Southern District of New York against the City of New York and the New York City Department of Parks and Recreation, pursuant to Section 707 of Title VII. The complaint alleged that the City of New York and its Parks Department engaged in a pattern or practice of discrimination against black and Hispanic employees in the Parks Department on the basis of their race and/or national origin in making promotion decisions. This case was resolved through the entry of a consent decree on June 8, 2005.

United States v. Zuni Public School District (D.N.M.)

On August 23, 2002, we filed a complaint in the United States District Court for the District of New Mexico against the Zuni Public School District, pursuant to Section 706 of Title VII. The complaint alleged that the District subjected a female teacher to sexual harassment that created a hostile work environment and that adversely affected the terms, conditions, and privileges of her employment, and that the District failed to take appropriate action to remedy the effects of the

discriminatory treatment. This case was resolved through the entry of a consent decree on September 9, 2002.

United States v. Fort Lauderdale (S.D. Fla.)

On September 9, 2002, we filed a complaint in the United States District Court for the Southern District of Florida against the City of Fort Lauderdale, Florida, pursuant to Section 706 of Title VII. The complaint alleged that the City violated Title VII by refusing to promote the charging party to the position of Engineering Inspector I because of his race and by subjecting the charging party to retaliatory harassment. This case was resolved through the entry of a consent decree on January 13, 2003.

United States v. Indiana Department of Transportation (S.D. Ind.)

On September 25, 2002, we filed a complaint in the United States District Court for the Southern District of Indiana against the Indiana Department of Transportation (IDOT), pursuant to Section 706 of Title VII. The complaint alleged that the IDOT failed or refused to promote the charging party because of his national origin. This case was resolved through the entry of a consent decree on September 3, 2003.

United States v. Prince George's County Fire Department (D. Md.)

On October 30, 2002, we filed a complaint in the United States District Court for the District of Maryland against Prince George's County, Maryland, pursuant to Section 706 of Title VII. The complaint alleged that the County discriminated against a female formerly employed as a fire technician in the County's Fire Department by subjecting her to a hostile work environment based on her sex and also by retaliating against her for her complaints of sex discrimination. This case was resolved through the entry of a consent decree on October 23, 2003.

United States v. Regents of the University of California (E.D. Cal.)

On March 4, 2003, we filed a complaint in the United States District Court for the Eastern District of California against the Regents of the University of California, pursuant to Section 706 of Title VII. The complaint alleged that the Regents at the University of California Davis Medical Center engaged in unlawful retaliation against the charging party and a similarly situated individual after these individuals complained of conduct that they reasonably believed to be sexual harassment. This case was resolved through the entry of a consent decree on March 13, 2003.

United States v. University of Guam (D. Guam)

On June 30, 2003, we filed a complaint in the United States District Court for the District of Guam against the University of Guam, pursuant to Section 706 of Title VII. The complaint alleged that 11 individuals who had filed charges against the University with the EEOC suffered discriminatory terms, conditions, and privileges of employment and discharge, constructive discharge, or refusal to renew their contracts because of their national origin and/or race or in retaliation for complaining about what they reasonably believed to be employment discrimination prohibited by Title VII. This case was resolved through the entry of a consent decree on July 3, 2003.

United States v. Town of West Terre Haute (S.D. Ind.)

On July 11, 2003, we filed a complaint in the United States District Court for the Southern District of Indiana against the Town of West Terre Haute, Indiana, pursuant to Section 706 of Title VII. The complaint alleged that the Town discriminated against a former 911 dispatcher with the Town's Police Department by subjecting her to sexual harassment for a period of approximately two years, which created a hostile work environment and resulted in her constructive discharge. The complaint specifically alleged that the former head of the Police Department repeatedly subjected the charging party to harassing and unwelcome conduct of a sexual nature, including, but not limited to, unwanted touching, obscene gestures, lewd comments about her sexual partners, crude comments about her body, and threatening remarks. The complaint further alleged that the Town failed to investigate or take any action in response to the charging party's complaints about the sexual harassment. This case was resolved through the entry of a consent decree on April 9, 2004.

United States v. Greenwood Community School Corporation (S.D. Ind.)

On July 18, 2003, we filed a complaint in the United States District Court for the Southern District of Indiana against the Greenwood Community School Corporation, pursuant to Section 706 of Title VII. The complaint alleged retaliation against the charging party, a current employee of the school district, because he previously had filed a charge of sex discrimination against Greenwood with the EEOC. This case was resolved through the entry of a consent decree on July 28, 2003.

United States v. City of Erie (W.D. Pa.)

On January 8, 2004, we filed a complaint in the United States District Court for the Western District of Pennsylvania against the City of Erie, Pennsylvania, pursuant to Section 707 of Title VII. The complaint alleged that the City engaged in a pattern or practice of gender-based employment discrimination against women in the hiring of entry-level police officers by using a physical agility test that resulted in

a disparate impact against women and did not otherwise meet the requirements of Title VII. The Section successfully prosecuted this case.

United States v. University of Medicine and Dentistry of New Jersey (D.N.J.)

On February 13, 2004, we filed a complaint in the United States District Court for the District of New Jersey against the University of Medicine and Dentistry of New Jersey (UMDNJ), pursuant to Section 706 of Title VII. The complaint alleged that the UMDNJ unlawfully failed to promote a senior housekeeper to the position of housekeeping supervisor in retaliation for bringing an earlier Title VII claim against the UMDNJ. This case was resolved through the entry of a consent decree on March 18, 2005.

Bond & United States v. City of Baltimore Department of Public Works (D. Md.)

On March 8, 2004, we filed a complaint in intervention in the United States District Court for the District of Maryland against the City of Baltimore, pursuant to Section 706 of Title VII. The complaint alleged that the charging party was subjected to sexual harassment by her supervisor and coworkers at the City's Department of Public Works (DPW) and that, despite receiving numerous complaints, the DPW failed to take appropriate action to remedy the situation. This case was resolved through the entry of a consent decree on November 29, 2004.

United States v. University of New Mexico (D.N.M.)

On March 16, 2004, we filed a complaint in the United States District Court for the District of New Mexico against the University of New Mexico, pursuant to Section 706 of Title VII. The complaint alleged that the University violated Title VII by refusing to provide modified-duty assignments to three pregnant women, even though it provided modified-duty assignments to employees who were not pregnant. The complaint also alleged that the University terminated one of the three women after she announced that she was pregnant and requested a modified-duty assignment. This case was resolved through the entry of a consent decree on May 3, 2004.

Lemons & United States v. Pattonville FPD (E.D. Mo.)

On July 13, 2004, we filed a complaint in intervention in the United States District Court for the Eastern District of Missouri against the Pattonville-Bridgeton Fire Protection District (Pattonville FPD), pursuant to Section 706 of Title VII. The complaint in intervention alleged that the only black firefighter at the Pattonville FPD between 1989 and 2003 was the victim of racial harassment. The complaint also alleged that the Pattonville FPD constructively discharged the charging party. This case was resolved through the entry of a consent decree on August 16, 2005.

Jane Doe I, II, III & United States v. District of Columbia (D.D.C.)

On August 5, 2004, we filed complaints in intervention in three cases in the United States District Court for the District of Columbia against the District of Columbia, pursuant to Section 706 of Title VII. The cases involved three female plaintiffs who alleged that they were discriminated against on the basis of their sex, in violation of Title VII. Our complaints in intervention sought: (1) compensatory damages on behalf of the plaintiffs and similarly situated individuals; and (2) to enjoin the District of Columbia from failing to or refusing to provide remedial, make-whole relief to the plaintiffs. This case was resolved through the entry of a consent decree on September 6, 2005.

United States v. Los Angeles Metropolitan Transit Authority (C.D. Cal.)

On September 16, 2004, we filed a complaint in the United States District Court for the Central District of California against the Los Angeles Metropolitan Transportation Authority (MTA), pursuant to Sections 706 and 707 of Title VII. The complaint alleged that the MTA engaged in a pattern or practice of discrimination by failing or refusing to reasonably accommodate employees and applicants for employment who, in accordance with their religious observances, practices, and/or beliefs, need accommodation because they are unable to comply with a requirement applied by MTA management that employees in the MTA's Operations Division be available to work weekends, on any shift, at any location. The complaint further alleged that the MTA discriminated against a member of the Jewish faith and former bus operator trainee for the MTA by failing or refusing reasonably to accommodate his religious observance, practice, and/or belief of observing the Sabbath from sundown on Friday until sundown on Saturday and by subsequently discharging him from employment. This case was resolved through the entry of a consent decree on October 4, 2005.

United States v. City of Gallup (D.N.M.)

On September 29, 2004, we filed a complaint in the United States District Court for the District of New Mexico against the City of Gallup, New Mexico, pursuant to Section 707 of Title VII. The complaint alleged that the City engaged in a pattern or practice of employment discrimination in hiring against American Indians based on race. This case was resolved through the entry of a consent decree on October 27, 2004.

United States v. New York Metropolitan Transportation Authority & New York City Transit Authority (E.D.N.Y.)

On September 30, 2004, we filed a complaint in the United States District Court for the Eastern District of New York against the New York Metropolitan Transportation Authority (MTA) and New York City Transit Authority (NYCTA), pursuant to Section 707 of Title VII. The complaint alleged that the MTA and the NYCTA engaged in a pattern or practice of employment discrimination in violation

of Section 707 of Title VII against Muslim and Sikh train and bus operators who wear religious head coverings. This case is currently being litigated.

United States v. City of Elsa (S.D. Tex.)

On February 1, 2005, we filed a complaint in the United States District Court for the Southern District of Texas against the City of Elsa, Texas, pursuant to Section 706 of Title VII. The complaint alleged that the City engaged in unlawful employment discrimination by removing the charging party's duties as bailiff and warrant officer because of her sex and by retaliating against three former City employees for filing charges of discrimination as well as for opposing conduct that they reasonably and in good faith believed to be unlawful under Title VII. This case was resolved through the entry of a consent decree on December 15, 2005.

United States v. Escambia County Board of Education (S.D. Ala.)

On March 1, 2005, we filed a complaint in the United States District Court for the Southern District of Alabama against the Escambia County, Alabama, Board of Education, pursuant to Section 706 of Title VII. The complaint alleged that the Board engaged in unlawful employment discrimination by subjecting the charging party, a female formerly employed as a custodian at one of the Board's schools, to a sexually hostile working environment and by terminating her employment in retaliation for her complaining of what she reasonably believed to be sexual harassment against her. This case was resolved through the entry of a consent decree on August 14, 2006.

United States v. City of Cairo (S.D. Ill.)

On March 3, 2005, we filed a complaint in the United States District Court for the Southern District of Illinois against the City of Cairo, Illinois, pursuant to Section 706 of Title VII. The complaint alleged that the City engaged in unlawful employment discrimination by subjecting the charging party, a former communications dispatcher in the City's police department, to sexual harassment by her supervisor, the assistant chief of police. This case was resolved through the entry of a consent decree on August 28, 2006.

Colon Ortiz v. International Ethical Laboratories, Inc. (D.P.R.)

On March 9, 2005, we filed a complaint in the United States District Court for the District of Puerto Rico against International Ethical Laboratories (IEL). The complaint alleged that IEL violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by denying the plaintiff reemployment rights upon his return from military service and by discharging him. This case was resolved through the entry of a consent decree on July 24, 2006.

Goodreau v. Bridgestone/Firestone North America Tire, LLC (M.D. Tenn.)

On March 29, 2005, we filed a complaint in the United States District Court for the Middle District of Tennessee against Bridgestone/Firestone North America Tire Co. (Bridgestone). The complaint alleged that Bridgestone violated USERRA by failing to advance the plaintiff on its progressive pay schedule during a period of approximately 15 months during which he was serving on active military duty. This case was resolved through the entry of a consent decree on April 4, 2005.

Villalobos v. Gulfstream Academy of Aeronautics, Inc. (S.D. Fla.)

On April 18, 2005, we filed a complaint in the United States District Court for the Southern District of Florida against Gulfstream Academy of Aeronautics, Inc., Thomas L. Cooper, Thomas P. Cooper, and Mark Ottosen. The complaint alleged that the defendants violated USERRA by denying the plaintiff retention in employment and instead discharging him because of his military service. The plaintiff withdrew his claims and complaint after the lawsuit was filed.

Lincoln v. First Express, Inc. (D.N.J.)

On May 27, 2005, we filed a complaint in the United States District Court for the District of New Jersey against First Express, Inc. The complaint alleged that First Express violated USERRA by denying the plaintiff prompt reemployment and the wages he would have earned from such prompt reemployment after his completion of active military service in the uniformed services. This case was resolved through the entry of a consent decree on July 28, 2005.

United States v. Weimar Independent School District (S.D. Tex.)

On June 23, 2005, we filed a complaint in the United States District Court for the Southern District of Texas against the Weimar Independent School District (Weimar ISD), pursuant to Section 706 of Title VII. The complaint alleged that Weimar ISD failed to hire the charging party for a high school principal position because of her race. This case was resolved through the entry of a consent decree on June 27, 2005.

United States v. Pontiac, Michigan, Fire Department (E.D. Mich.)

On July 26, 2005, we filed a complaint in the United States District Court for the Eastern District of Michigan against the City of Pontiac, Michigan, pursuant to Section 707 of Title VII. The complaint alleged that the City engaged in a pattern or practice of discrimination on the basis of race and sex by creating and maintaining dual hiring and promotional systems in its Fire Department. More specifically, the complaint alleged that, since 1984, the City has maintained collective bargaining agreements with Local 376, Fire Fighters Union, that require the City to use dual hiring and promotional eligibility lists, with one list including all candidates in rank order and a second list of only "minority" candidates, including women, in rank

order. This case was resolved through the entry of a consent decree on September 28, 2006.

Veryzer v. Mills & Murphy Software Systems, Inc. (M.D. Fla.)

On August 5, 2005, we filed a complaint in the United States District Court for the Middle District of Florida against Mills & Murphy Software System, Inc. (Mills). The complaint alleged that Mills violated USERRA by terminating the plaintiff's employment due to her active military service in the Georgia Air National Guard and by failing to re-employ her after completion of her active military service. This case was resolved through a settlement agreement on October 13, 2006.

United States v. Indiana Department of Correction (S.D. Ind.)

On August 10, 2005, we filed a complaint in the United States District Court for the Southern District of Indiana against the Indiana Department of Correction (IDOC). The complaint alleged that IDOC violated USERRA when, upon the charging party's return from active military duty, IDOC suspended him from employment, terminated him with loss of pay, seniority, and related benefits, and refused to pay him for the period he was not allowed to work due to his termination. This case was resolved through the entry of a consent decree on August 10, 2005.

United States v. State of Ohio Environmental Protection Agency (S.D. Ohio)

On August 26, 2005, we filed a complaint in the United States District Court for the Southern District of Ohio against the State of Ohio, the Ohio Environmental Protection Agency, and the Ohio Department of Administrative Services, pursuant to Sections 706 and 707 of Title VII. The complaint alleged both a pattern or practice of discrimination and discrimination against the charging party on the basis of religion. This case was resolved through the entry of a consent decree on September 5, 2006.

McCullough v. City of Independence, Missouri (W.D. Mo.)

On October 7, 2005, we filed a complaint in the United States District Court for the Western District of Missouri against the City of Independence, Missouri. The complaint alleged that the City violated USERRA by requiring the plaintiff to provide official military orders or an official memorandum or letter to indicate that he was absent for military purposes, suspending him from employment, placing him on a six month probationary period, refusing to pay McCullough for the period he was not allowed to work due to his suspension, and failing and refusing to clear his personnel file of wrongdoing in the matter. This case was resolved through the entry of a consent decree on December 26, 2005.

White v. SOG Specialty Knives (W.D. Mo.)

On October 27, 2005, we filed a complaint in the United States District Court for the Western District of Missouri alleging that S.O.G. Specialty Knives (SSK) violated USERRA (1) by considering the plaintiff's military service and deployment to Iraq as motivating factors in SSK's decision to immediately discharge him from his position; (2) by reemploying the plaintiff upon his return from active duty in a position that was not of like seniority, status, and pay, the duties of which the plaintiff was qualified to perform; and (3) by discharging the plaintiff, within one year of his reemployment, without cause. This case was resolved through the entry of a consent decree on November 2, 2005.

Woodall, McMahon & Madison v. American Airlines (N.D. Tex.)

On January 12, 2006, we filed a class-action complaint in the United States District Court for the Northern District of Texas against American Airlines, Inc., alleging violations of USERRA. This lawsuit is the first class-action complaint filed by the United States under USERRA. The complaint charges that American Airlines violated USERRA by denying pilots employment benefits during their military service.

The complaint alleged that American Airlines conducted an audit of the leave taken for military service by its pilots in 2001. The complaint further alleged that based on the results of that audit, American Airlines reduced the employment benefits of those of its pilots who had taken military leave, while not reducing the same benefits of those of its pilots who had taken similar types of non-military leave. This case is currently being litigated.

United States v. Southern Illinois University (S.D. Ill.)

On February 8, 2006, we filed a complaint in the United States District Court for the Southern District of Illinois against Southern Illinois University (SIU) pursuant to Section 707 of Title VII. The complaint alleged that SIU violated Title VII by maintaining three paid graduate fellowship programs that were open only to students who either were of a specified race or national origin or were female. Participants in these programs were employed by SIU as part of the fellowship. While denying that it violated Title VII, SIU admitted that it limited eligibility for and participation in the paid fellowship programs on the basis of race and sex. This case was resolved through the entry of a consent decree on February 9, 2006.

U.S. v. Langston University (W.D. Okla.)

On February 24, 2006, we filed a complaint in the United States District Court for the Western District of Oklahoma against Langston University pursuant to Section 706 of Title VII. The complaint alleged that Langston University violated Title VII by paying the plaintiff less than comparably situated faculty members at

the University due to her race. This case was resolved through the entry of a consent decree on February 27, 2006.

Bower v. Roadway Express (D. Or.)

On March 1, 2006, the Division filed a complaint in the United States District Court for the District of Oregon on behalf of the plaintiff against Roadway Express, Inc. (Roadway), alleging violations of USERRA. The complaint alleged that Roadway willfully violated USERRA when it refused to reinstate and reasonably accommodate the plaintiff upon his return from active military service in the United States Army. The complaint sought declaratory relief, reinstatement, and backpay. This case was resolved through a settlement agreement on November 3, 2006.

United States v. Alcalde De Vega Alta (D.P.R.)

On March 21, 2006, we filed a complaint against the Municipio de Vega Alta, Puerto Rico, in the United States District Court for the District of Puerto Rico, pursuant to Section 706 of Title VII. The complaint alleges that Vega Alta, in its police department, engaged in gender discrimination and retaliation in violation of Title VII of the Civil Rights Act, as amended, by excluding females from regular police officer duties. The duties from which females were excluded include driving patrol cars and other motorized vehicles, conducting investigations commensurate with their previous work experience, and working as shift supervisors. The complaint further alleges that the female officers were assigned instead to clerical, dispatch, and school guard duties because of their sex. The complaint also alleged that Vega Alta retaliated against a male police officer because he participated in the EEOC investigation of a charge or charges filed by one or more of the affected female police officers. This case is being litigated.

United States v. City of Virginia Beach (E.D. Va.)

On April 3, 2006, we filed a complaint in the United States District Court for the Eastern District of Virginia against the City of Virginia Beach, Virginia, pursuant to Section 707 of Title VII. The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. This case was resolved through the entry of a consent decree on July 24, 2006.

United States v. City of Chesapeake (E.D. Va.)

On July 24, 2006, we filed a complaint in the United States District Court for the Eastern District of Virginia against the City of Chesapeake, Virginia, pursuant to Section 707 of Title VII. The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for entry-level police officer positions in a manner that has an unlawful

disparate impact on African-American and Hispanic applicants. This case is currently being litigated.

United States v. San Antonio (W.D. Tex.)

On September 29, 2006, we filed a complaint in the United States District Court for the Western District of Texas against the City of San Antonio, Texas, pursuant to Section 706 of Title VII. The complaint alleges that the city unlawfully discriminated against a detective on the basis of her sex in violation of Title VII of the Civil Rights Act of 1964 when the city's police department forced her to take a light-duty position under the department's mandatory maternity light-duty policy, despite the detective's ability to perform her job in her full-duty capacity. This case is currently being litigated.

United States v. Board of Directors of Tallahassee Community College (N.D. Fla.)

On November 2, 2006, we filed a complaint in the United States District Court for the Northern District of Florida against the Board of Directors of Tallahassee Community College pursuant to Section 706 of Title VII. In our complaint, we alleged that the defendant discriminated against the charging party on the basis of his race when he was not promoted to a particular position. This case was resolved through the entry of a consent decree on November 7, 2006.

Donelan v. City of Highland Heights (E.D. Ky.)

On December 21, 2006, the Division filed a complaint on behalf of the plaintiff in the United States District Court for the Eastern District of Kentucky, alleging that his employment as a patrol officer with the City of Highland Heights was terminated in violation of USERRA. The complaint alleged that, from the time the plaintiff informed the police chief that he was considering joining the U.S. Air Force Reserve through the time his employment was terminated, the chief discriminated against the plaintiff by making hostile remarks about the plaintiff's military service and subjecting him to hostile actions. The complaint also alleged that the chief terminated the plaintiff's employment without just cause shortly after the plaintiff returned from military training. This case is currently being litigated.

A complaint based on an individual charge of discrimination under Section 706 of Title VII usually involves only one victim per charge. In some cases, such as *United States v. University of Guam*, one complaint will be filed that is based on several (in that particular case eleven) different Section 706 charges. In other cases, such as *United States v. Prince Georges County Fire Department*, there is only one charging party but the relief results in widespread changes to the defendant employer's employment practices that benefit many employees. Complaints alleging a pattern or practice of discrimination in violation of Section 707 involve multiple victims. The widespread changes in the defendants' employment practices that result from such cases typically benefit innumerable current and prospective employees. We

cannot uniformly provide an accurate number of victims, however, because the precise identity of victims and the relief to which they are entitled typically are subject to extensive proceedings and sometimes cannot be determined for years after the conclusion of the primary litigation.

Prison conditions and police misconduct

14. In his testimony before the Senate Judiciary Committee on July 18, 2006, Attorney General Gonzales testified: "The [Civil Rights] Division has also authorized over 30 percent more investigations under the Civil Rights of Institutionalized Persons Act (CRIPA) in the past five and one-half years than in the previous comparable time frame."

D. In February 2005, the Justice Department provided data to the Senate Judiciary Committee indicating the Civil Rights Division's Special Litigation Section – which enforces the CRIPA statute – received a 73% increase in attorneys between 1998 and 2002. In that light, isn't Attorney General Gonzales's testimony misleading? Shouldn't we expect a 73% increase in CRIPA investigations during the Bush Administration rather than just a 30% increase?

Answer: Each investigation rests on its own facts, and the Department of Justice does not set numerical quotas on the number of complaints or prosecutions our attorneys are required to bring. However, as of January 17, 2007, the Special Litigation Section had 46 authorized attorneys in comparison to the 36 authorized at the end of the previous Administration – an increase of 28%. In recent years, the Civil Rights Division has authorized more than 30 percent more investigations under the Civil Rights of Institutionalized Persons Act (CRIPA) than during a comparable period of the previous Administration. In FY 2006 alone, the Division handled CRIPA matters and cases involving over 175 facilities in 34 states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. The Division continued its investigations of 77 facilities into 2006 and monitored the implementation of consent decrees, settlement agreements, memoranda of understanding, and court orders involving 99 facilities. We are proud of this record of vigorous enforcement.

E. Please provide the number of CRIPA investigations authorized each year over the past 12 years.

Answer: In FY 2007, as of January 12, 2007, the Division has authorized three investigations. In FY 2006, the Division authorized eight investigations (as of July 18, 2006, the Division had authorized seven investigations). In FY 2005, the Division authorized eleven investigations. In FY 2004, the Division authorized fourteen investigations. In FY 2003, the Division authorized twelve investigations. In FY 2002, the Division authorized sixteen

investigations. In FY 2001, the Division authorized six investigations (three of which were filed under the current Administration). In FY 2000, the Division authorized four investigations. In FY 1999, the Division authorized five investigations. In FY 1998, the Division authorized ten investigations. In FY 1997, the Division authorized sixteen investigations. In FY 1996, the Division authorized seven investigations. In FY 1995, the Division authorized twenty-five investigations (two of which were filed during or after July 1995).

15. In his testimony before the Senate Judiciary Committee on July 18, 2006, Attorney General Gonzales testified: "And in matters involving children committed to juvenile justice facilities, this Administration has increased the number of settlement agreements by 50 percent and has more than doubled the number of investigations and findings letters issued."

In light of the 73% increase in attorneys within the Civil Rights Division's Special Litigation Section – which monitors juvenile justice facilities – shouldn't we expect a 73% increase in settlement agreements, investigations, and findings letters?

Answer: Each investigation rests on its own facts, and the Department of Justice does not set numerical quotas on the number of complaints or prosecutions our attorneys are required to bring. However, as of January 17, 2007, the Special Litigation Section had 46 authorized attorneys in comparison to the 36 authorized at the end of the previous Administration – an increase of 28%. With regard to juvenile justice facilities, this Administration has increased the number of settlement agreements by more than 60%, has more than doubled the number of investigations, and has more than doubled the number of findings letters issued.

16. In your responses to written questions submitted following your 2005 confirmation hearing, you stated: "The vast majority of the pattern or practice investigations authorized by the Department of Justice have involved allegations of use of excessive force." How many such investigations initiated since January 2001 have involved allegations of discriminatory law enforcement? How many such investigations initiated prior to January 2001 involved such allegations?

Answer: The Special Litigation Section investigates patterns or practices of violations of federally protected rights by law enforcement agencies under Section 14141 of the 1994 Violent Crime Control and Law Enforcement Act and the Omnibus Crime Control and Safe Streets Action of 1968, 42 U.S.C. § 3789d. The anti-discrimination provision of this statute prohibits discrimination on the basis of race, color, sex or national origin by police departments receiving federal funds.

The Civil Rights Division has been active in pattern or practice enforcement across the breadth of the Division through investigations, lawsuits, and settlement agreements. From 2001 to 2006, the Division has ensured the integrity of law enforcement by more than tripling the number of settlements negotiated with police

departments across the country since 2001. During this Administration, the Civil Rights Division has successfully resolved fourteen pattern or practice police misconduct investigations involving eleven law enforcement agencies, compared to only four investigations resolved by settlement during a comparable time period of the previous administration. The Division also has filed more consent decrees (4 vs. 3) than in the preceding 6 years. We have issued, moreover, more than six times the numbers of technical assistance letters to police departments (19 vs. 3).

We are currently conducting nine Section 14141 pattern or practice investigations of police departments and monitoring eleven agreements between the United States and police departments. In 2005 alone, the Division initiated four pattern or practice investigations against police departments.

Overall, the Division has obtained significant relief under its police misconduct authority to prevent excessive uses of force, unconstitutional uses of canines, biased policing, and unconstitutional searches and seizures. The Division works with police departments to implement widespread reforms, including training, supervising, and disciplining officers and implementing systems to receive, investigate, and respond to civilian complaints of misconduct. The reforms instituted by large and small police departments pursuant to settlements with various departments have had a widespread impact and are being used as models by other police departments. The Division also cooperatively works with departments large and small to provide valuable expert technical assistance and guidance from experts with years of police management experience.

17. In your written testimony from November 16, 2006, you stated: "During this Administration, the Civil Rights Division has successfully resolved fourteen pattern or practice police misconduct investigations involving eleven law enforcement agencies, compared to only four investigations resolved by settlement during a comparable time period of the previous administration. Since 2001, the Division has opened more investigations (16 vs. 15) and filed more consent decrees (4 vs. 3) than in the preceding 6 years."

A. Please provide summaries of each of the 18 pattern or practice police misconduct investigations that have been "successfully resolved," including the date the investigation was opened, the date it was resolved, and the nature of the resolution.

Answer: In December 1994, the Division opened an investigation of the New Jersey State Police Department. The Division successfully resolved this investigation in December 1999 when the United States entered into a Consent Decree with the jurisdiction.

In July 1995, the Division opened an investigation of the Steubenville, Ohio, Police Department. The Division successfully resolved this investigation in October 1997, when the United States entered into a Consent Decree with the jurisdiction. In March 2005, the Consent Decree was terminated.

In April 1996, the Division opened an investigation of the Pittsburgh, Pennsylvania, Bureau of Police. The Division successfully resolved this investigation in April 1997, when the United States entered into a Consent Decree with the jurisdiction. In April 2005, the Consent Decree was terminated.

In June 1996, the Division opened an investigation of the Montgomery County, Maryland, Police Department. The Division successfully resolved this investigation in January 2000, when the United States entered into a Memorandum of Agreement with the jurisdiction. In February 2005, the Memorandum of Agreement was terminated.

In August 1996, the Division opened an investigation of the Los Angeles, California, Police Department. The Division successfully resolved this investigation in June 2001, when the United States entered into a Consent Decree with the jurisdiction.

In December 1997, the Division opened an investigation of the Buffalo, New York, Police Department. The Division successfully resolved this investigation in September 2002, when the United States entered into a Memorandum of Agreement with the jurisdiction.

In March 1998, the Division opened an investigation of the Columbus, Ohio, Division of Police. The Division successfully resolved this investigation in September 2002, when the United States entered into a settlement with the jurisdiction. In May 2004, the settlement was terminated.

In January 1999, the Division opened an investigation of the District of Columbia Metropolitan Police Department. The Division successfully resolved this investigation in June 2001, when the United States entered into a Memorandum of Agreement with the jurisdiction.

In July 1999, the Division opened an investigation of the Prince George's County, Maryland, Police Department. The Division successfully resolved this investigation in March 2004, when the United States entered into a Consent Decree with the jurisdiction.

In January 2000, the Division opened an investigation of the Mount Prospect, Illinois, Police Department. The Division successfully resolved this investigation in January 2003, when the United States entered into a Memorandum of Agreement with the jurisdiction.

In May 2000, the Division opened an investigation of the Highland Park, Illinois, Police Department. The Division successfully resolved this investigation in July 2001, when the United States entered into a

Memorandum of Agreement with the jurisdiction. In July 2004, the Memorandum of Agreement was terminated.

In August 2000, the Division opened an investigation of the Cleveland, Ohio, Police Department. The Division successfully resolved this investigation in February 2004, when the United States entered into a settlement with the jurisdiction. In March 2004, the settlement was terminated.

In October 2000, the Division opened a second investigation of the Prince George's County, Maryland, Police Department. The Division successfully resolved this investigation in January 2004, when the United States entered into a Consent Decree with the jurisdiction.

In December 2000, the Division opened an investigation of the Detroit, Michigan, Police Department. The Division successfully resolved this investigation in July 2003, when the United States entered into a Consent Decree with the jurisdiction.

In May 2001, the Division opened an investigation of the Cincinnati, Ohio, Police Department. The Division successfully resolved this investigation in April 2002, when the United States entered into a Memorandum of Agreement with the jurisdiction.

In December 2001, the Division opened a second investigation of the Detroit, Michigan, Police Department. The Division successfully resolved this investigation in July 2003, when the United States entered into a Consent Decree with the jurisdiction.

In July 2002, the Division opened a second investigation of the Cleveland, Ohio, Police Department. The Division successfully resolved this investigation in May 2004, when the United States entered into a Memorandum of Agreement with the jurisdiction.

In January 2003, the Division opened an investigation of the Villa Rica, Georgia, Police Department. The Division successfully resolved this investigation in December 2003, when the United States entered into a Memorandum of Agreement with the jurisdiction. In December 2006, the Memorandum of Agreement was terminated.

B. Please summarize each of the 31 investigations opened, including the agency under investigation, the size of the agency being investigated, the date the investigation was opened, and the allegations under investigation.

Answer: In August 1997, the Division opened an investigation of the New York City Police Department. The size of the agency was 39,099 personnel. The Division investigated allegations of improper use of force.

In November 1997, the Division opened an investigation of the Orange County, Florida, Police Department. The size of the agency was 1,162 personnel. The Division investigated allegations of improper use of force.

In December 1997, the Division opened an investigation of the Buffalo, New York, Police Department. The size of the agency was 944 personnel. The Division investigated allegations of improper use of force.

In March 1998, the Division opened an investigation of the Columbus, Ohio, Division of Police. The size of the agency was 1,776 personnel. The Division investigated allegations of improper use of force, false arrest, and improper searches and seizures.

In March 1998, the Division opened an investigation of the Eastpointe, Michigan, Police Department. The size of the agency was 53 personnel. The Division investigated allegations of racial profiling.

In January 1999, the Division opened an investigation of the District of Columbia Metropolitan Police Department. The size of the agency was 3,443 personnel. The Division investigated allegations of improper use of force.

In March 1999, the Division opened an investigation of the Charleston, West Virginia, Police Department. The size of the agency was 183 personnel. The Division investigated allegations of improper use of force.

In March 1999, the Division opened a second investigation of the New York City Police Department. The size of the agency was 39,099 personnel. The Division investigated allegations of racial profiling.

In July 1999, the Division opened an investigation of the Prince George's County, Maryland, Police Department. The size of the agency was 1,405 personnel. The Division investigated allegations of improper use of force by canine officers.

In July 1999, the Division opened an investigation of the Riverside, California, Police Department. The size of the agency was 1,234 personnel. The Division investigated allegations of improper use of force and racial profiling.

In January 2000, the Division opened an investigation of the Mount Prospect, Illinois, Police Department. The size of the agency was 82 personnel. The Division investigated allegations of racial profiling.

In May 2000, the Division opened an investigation of the Highland Park, Illinois, Police Department. The size of the agency was 60 personnel. The Division investigated allegations of racial profiling.

In August 2000, the Division opened an investigation of the Cleveland, Ohio, Police Department. The size of the agency was 1,837 personnel. The Division investigated allegations of improper use of force and racial profiling.

In October 2000, the Division opened a second investigation of the Prince George's County, Maryland, Police Department. The size of the agency was 1,405 personnel. The Division investigated allegations of improper use of force.

In December 2000, the Division opened an investigation of the Detroit, Michigan, Police Department. The size of the agency was 4,016 personnel. The Division investigated allegations of improper use of force.

In February 2001, the Division opened an investigation of the Tulsa, Oklahoma, Police Department. The size of the agency was 796 personnel. The Division investigated allegations of improper use of force and racial profiling.

In May 2001, the Division opened an investigation of the Cincinnati, Ohio, Police Department. The size of the agency was 1,004 personnel. The Division investigated allegations of improper use of force.

In May 2001, the Division opened a second investigation of the Detroit, Michigan, Police Department. The size of the agency was 4,016 personnel. The Division investigated allegations of unlawful arrest and detention and unconstitutional conditions in the Department's holding cells.

In April 2002, the Division opened an investigation of the Schenectady, New York, Police Department. The size of the agency was 156 personnel. The Division investigated allegations of improper use of force, racial profiling, race-based searches and seizures, and unlawful searches and seizures.

In May 2002, the Division opened an investigation of the Miami, Florida, Police Department. The size of the agency was 1,117 personnel. The Division investigated allegations of improper use of force and planting of evidence.

In May 2002, the Division opened an investigation of the Portland, Maine, Police Department. The size of the agency was 150 personnel. The Division investigated allegations of improper use of force.

In July 2002, the Division opened a second investigation of the Miami, Florida, Police Department. The size of the agency was 1,837 personnel. The

Division investigated allegations of unconstitutional conditions in the Department's holding cells.

In December 2002, the Division opened an investigation of the Providence, Rhode Island, Police Department. The size of the agency was 468 personnel. The Division investigated allegations of improper use of force, race-based response to calls for assistance, and race-based uses of force.

In January 2003, the Division opened an investigation of the Villa Rica, Georgia, Police Department. The size of the agency was 37 personnel. The Division investigated allegations of racial profiling.

In March 2003, the Division opened an investigation of the Alabaster, Alabama, Police Department. The size of the agency was 50 personnel. The Division investigated allegations of improper use of force and racial profiling.

In June 2003, the Division opened an investigation of the Bakersfield, California, Police Department. The size of the agency was 284 personnel. The Division investigated allegations of improper use of force.

In February 2004, the Division opened an investigation of the Virgin Islands Police Department. The size of the agency was 456 personnel. The Division investigated allegations of improper use of force.

In February 2004, the Division opened a second investigation of the Virgin Islands Police Department. The size of the agency was 456 personnel. The Division investigated allegations of improprieties by the Department's Narcotics Strike Force.

In August 2004, the Division opened an investigation of the Beacon, New York, Police Department. The size of the agency was 38 personnel. The Division investigated allegations of improper use of force and unlawful arrests.

In December 2005, the Division opened an investigation of the Warren, Ohio, Police Department. The size of the agency was 73 personnel. The Division investigated allegations of improper use of force and improper strip and body cavity searches.

In October 2005, the Division opened an investigation of the Easton, Pennsylvania, Police Department. The size of the agency was 64 personnel. The Division investigated allegations of improper use of force.

<u>Criminal civil rights prosecutions</u>

18. In your testimony from November 16, 2006, you stated: "During the past 6 years, we have obtained convictions of 50% more law enforcement officials for color of law violations than in the preceding 6 years." According to data that the Justice Department provided to this Committee in February 2005, the number of prosecutors serving in the Civil Rights Division's Criminal Section increased by 52% between 1998 and 2004. In this light, your testimony conveys the misleading impression that the Bush Administration was more successful than the Clinton Administration in obtaining criminal civil rights prosecutions. Given that the Criminal Section has expanded by over 50% since 1998, we should expect that the number of convictions of law enforcement officials would increase by 50% over the past 6 years.

Please indicate all categories of civil rights prosecutions in which the number of convictions grew by <u>less</u> than 50% over the past 6 years, and provide an explanation as to why the number of convictions wasn't higher.

Answer: By any measure, the overall productivity of the Criminal Section is as high as or higher than it has ever been. For example, in FY 2006, the Section secured 180 total convictions, which was a 51% increase in total convictions over FY 2001. In that time frame, the Section's authorized attorney slots increased by only approximately 14%, suggesting that the Section has become more efficient and productive over time. Indeed, the Section has convicted 50% more law enforcement officials for color of law violations in the past six years, as compared to the previous six years, while also bringing six times the number of prosecutions for human trafficking offenses.

A substantial decrease in the number of complaints about violations of the Freedom of Access to Clinic Entrances Act (FACE) has, in consequence, resulted in fewer FACE prosecutions. Despite receiving substantially fewer complaints, the Division identifies potential FACE Act violations by constantly monitoring news reports, coordinating with federal law enforcement officers in the field, and communicating regularly with provider groups to ensure that we are informed of incidents that may warrant federal involvement. We have continued to lead the Task Force on Violence Against Reproductive Health Care Providers, working closely with the FBI, ATF, USMS, USPIS and attorneys from the Criminal Division to ensure unified, consistent, and responsive federal involvement when FACE Act violations occur. The Task Force also meets regularly with representatives from several provider groups, including Planned Parenthood Federation of America, the National Abortion Federation, and the Feminist Majority Foundation, to address their concerns. We review the factual allegations of each complaint made to the Division and determine whether further factual inquiry is warranted and the statutory requirements of the FACE Act may be met.

Here are examples of recent prosecutions:

- ***United States v. Jordi* (S.D. Fla.): In February 2004, the defendant pleaded guilty to attempted arson for plotting to bomb unspecified abortion clinics. The**

defendant was arrested after purchasing a weapon and some bomb materials but before he had an opportunity to carry out any attacks.

- ***U.S. v. Skinner* (N.D. Ala.): In April 2006, the defendant pleaded guilty to a FACE Act violation for intentionally driving his car into the West Alabama Women's Center causing damage to the clinic.**

- ***United States v. Kopp* (W.D.N.Y.): In January 2007, Defendant James Charles Kopp was convicted of murdering Dr. Barnett Slepian, a provider of reproductive health services, on October 23, 1998, in violation of 18 U.S.C. § 248 (Freedom of Access to Clinic Entrances) and 18 U.S.C. § 924(c) (use of a firearm in the commission of a felony). Kopp fled the United States after the shooting, and a grand jury indicted Kopp in 2000. Kopp was apprehended in France on March 29, 2001. Following his extradition to the United States on June 5, 2002, Kopp was convicted of state murder charges for killing Dr. Slepian. After the state prosecution, the United States Attorney's Office, in conjunction with the Criminal Section, prosecuted Kopp on the federal charges.**

Similarly, FBI statistics reflect that fewer incidents of bias crimes have been reported. According to the FBI's Hate Crime Statistics for 2000, the FBI documented 8,055 single bias incidents. Yet, by 2005, the FBI reported 7,160 single bias incidents.

The Civil Rights Division is deeply committed to the vigorous enforcement of our nation's civil rights laws and, in recent years, has brought a number of high profile hate crime cases. In fact, Criminal Section Deputy Chief Barbara Bernstein recently was selected to receive the coveted Helene and Joseph Sherwood Prize for Combating Hate by the Anti-Defamation League. As one of the select few in law enforcement to receive the prestigious award, the ADL said that Deputy Chief Bernstein "exemplifies an ongoing commitment, support, and contribution in helping to eliminate hate and prejudice."

We continue to aggressively prosecute those within our society who attack others because of the victims' race, color, national origin, or religious beliefs. Here are examples of recent prosecutions:

- ***United States v. Coombs* (M.D. Fla.): In August 2006, a defendant in Florida pleaded guilty to burning a cross in his yard to intimidate an African-American family who were considering buying a house located next door to the defendant's residence.**

- ***United States v. Saldana, et al.* (C.D. Cal.): In August 2006, four Latino gang members were convicted of threatening and assaulting African-Americans in a neighborhood that the defendants and their gang members sought to control. All four defendants, members of the notorious Avenues street gang, were convicted of a conspiracy charge that alleged numerous violent assaults**

against African-Americans, including murders that took place in 1999 and 2000. Specifically, the jury found that the defendants caused the death of Christopher Bowser, an African-American man who was shot while waiting at a bus stop in Highland Park on December 11, 2000. The jury also found that the defendants caused the death of Kenneth Kurry Wilson, an African-American man who was gunned down while looking for a parking place in Highland Park on April 18, 1999. Three of the defendants were also convicted of murdering Wilson because he was African American and because he was using a public street, and using a firearm during the commission of a conspiracy and hate crimes. All four of the defendants received life sentences.

- ***United States v. Frederict and Kuzlik*** **(N.D. Ohio): In October and November 2006, defendants Joseph Kuzlik and David Frederict pleaded guilty to conspiracy, interference with housing rights, and making false statements to federal investigators. In February 2005, these defendants poured mercury on the front porch and driveway of a bi-racial couple in an attempt to force them out of their Ohio home.**

- ***United States v. Oakley*** **(D.D.C.): In April 2006, the defendant entered a guilty plea to e-mailing a bomb threat to the Council on American Islamic Relations.**

- ***United States v. Baird*** **(W.D. Ark.): In April 2006, a defendant entered a guilty plea to burning a cross near the home of a woman who was living with her white daughter and her daughter's African-American boyfriend. The defendant was sentenced in November 2006. Three additional defendants were tried in September 2006, two of whom were convicted on charges of conspiracy and are awaiting sentencing.**

- ***United States v. Nix*** **(N.D. Ill.): In March 2006, the defendant entered a guilty plea to interference with an Arab-American family's housing rights by igniting an explosive device inside the family's van that was parked near their home.**

- ***United States v. Baalman, et al.*** **(D. Utah): From December 2005 through January 2006, in Salt Lake City, three white supremacists pleaded guilty to assaulting an African-American man riding his bicycle to work because of his race and because they wanted to control the public streets for the exclusive use of white persons.**

In addition to the above cited cases, in recent years, the Division has aided local prosecutors in efforts to prosecute historical Civil Rights era murders. James Ford Seale was indicted on January 25, 2007, by a federal grand jury for two counts of kidnapping resulting in death, and one count of conspiracy, for his participation in the abductions and murder of two nineteen-year-old African-American men, Henry

Dee and Charles Moore, in 1964. According to the allegations in the indictment, the victims in this case were kidnapped by a group of White Knights of the Ku Klux Klan that included James Seale. Dee and Moore were beaten by their captors, then transported and finally forcibly drowned by being thrown into the Old Mississippi River, tied to heavy objects alleged to have included an engine block, iron weights, and railroad ties.

The Justice Department also assisted the Mississippi District Attorney's Office in reopening the investigation into the 1955 murder of Emmett Till, a 14-year-old African-American teenager, who was kidnapped and killed in rural Mississippi. The investigation showed that there was no federal jurisdiction. Thus, on March 16, 2006, the Justice Department reported the results of that investigation to the District Attorney for Greenville, Mississippi, Joyce Chiles, for her to consider whether to pursue state charges. A state grand jury in Mississippi declined to indict the case. Also, in 2003, the Justice Department convicted Ernest Avants for the 1966 killing of Ben Chester White, an African-American sharecropper, on national forest land. White was murdered as part of a plot by white supremacists to lure Martin Luther King, Jr., to Mississippi so that they could assassinate him.

The Criminal Section also includes data related to "backlash" crimes in its bias crime statistics. After September 11, 2001, the Criminal Section implemented an initiative to combat "backlash" crimes involving violence and threats aimed at individuals perceived to be Arab, Muslim, Sikh, or South Asian. This initiative has led to numerous prosecutions involving physical assaults, some minor and some involving dangerous weapons and resulting in serious injury or death, as well as threats made over the telephone, on the internet, through the mail, and in face-to-face interactions. We have also prosecuted cases involving shootings, bombings, and vandalism directed at homes, businesses, and places of worship.

These offenses are prosecuted under a variety of civil rights statutes and other Title 18 offenses, depending on the conduct involved. The Department has investigated more than 750 bias-motivated incidents since September 11, 2001. However, the number of backlash allegations referred to the Department has dropped approximately 86% from a high of 312 in 2001 to just 44 last year. The Department also assisted local law enforcement in bringing more than 160 such criminal prosecutions from 2001 to 2006.

Our efforts have resulted in 32 federal convictions in "backlash" cases. For example, in *United States v. Cunningham* (W.D. Wash.), a defendant who shot at worshipers leaving a Seattle mosque was sentenced to seventy-eight months in prison in December 2002. In *United States v. Goldstein, et al.* (M.D. Fla.), defendants who conspired to destroy mosques and Islamic centers in Florida were convicted. The leader was sentenced to 151 months in prison in June 2003 and his coconspirators also received lengthy prison terms. And last year, a defendant in *United States v. Nunez-Flores* (W.D. Tex.), who threw a Molotov cocktail at an

Islamic Center in El Paso, received a sentence of 171 months in prison in June 2005.

An additional bias-motivated murder case is set for trial later this year. In *United States v. Eye and Sandstrom*, attorneys from the Civil Rights Division and the United States Attorney's Office for the Western District of Missouri are prosecuting two men who, according to the indictment, fatally shot an African-American man as he was walking to work in downtown Kansas City.

Prosecuting hate crimes remains a priority of the Department. The Civil Rights Division has continued to use the same vigorous enforcement standards for prosecuting hate crimes that have been a hallmark of the Division's efforts.

19. In his testimony before the Senate Judiciary Committee on July 18, 2006, Attorney General Gonzales testified: "[T]he Department has obtained convictions against 30 percent more law enforcement officials for criminal civil rights violations than during the comparable period of the previous administration." How do you reconcile your claim of a 50% increase in law enforcement convictions with Attorney General Gonzales's recent claim of a 30% increase?

Answer: Attorney General Alberto Gonzales testified in July 2006 that there had been a 30% increase in the number of color of law defendants convicted since 2001 over a comparable period prior to 2001. The testimony was based on 272 color of law defendants convicted during FY 2001 through 2005. In FY 1996 through 2000, the Department obtained the convictions of 190 color of law defendants. The Attorney General's testimony actually understated the percentage increase in defendants convicted: the additional eighty-two convictions during the relevant time frame represent a 43% increase.

In November 2006, Assistant Attorney General Wan Kim provided written testimony to the Senate Judiciary Committee that "during the past six years, we have obtained convictions of 50% more law enforcement officials for color of law violations than in the preceding six years." This testimony was based on 327 color of law convictions during FY 2001 through 2006 compared to 219 color of law convictions during FY 1995 through 2000.

Thus, Assistant Attorney General Kim's testimony encompassed a longer time frame than that of the Attorney General and reflected continued productivity and success by the Department's prosecutors. Both sets of testimony accurately reflect that the Civil Rights Division has prosecuted significantly more color of law defendants in the past six fiscal years compared to the previous six fiscal years.

20. In his testimony before the Senate Judiciary Committee on July 18, 2006, Attorney General Gonzales testified: "The Civil Rights Division recently brought more criminal civil rights cases in a single year than in any other year in the Division's history...." Isn't it true that the Civil Rights Division has more attorneys in its Criminal Section now than in any other year in the Division's history?

Answer: No (as of February 1, 2007). However, the Administration has increased the number of prosecutor positions in the Criminal Section by approximately 12% from FY 2001 to FY 2007.

In the last six fiscal years, the Civil Rights Division has compiled an impressive record in prosecuting criminal civil rights cases, including the ninety-six criminal civil rights prosecutions brought in FY 2004, a record for cases filed in a single year. We are proud of this record of vigorous enforcement.

21. In his testimony before the Senate Judiciary Committee on July 18, 2006, Attorney General Gonzales testified: "Between fiscal years 2001 and 2005, Federal prosecutors charged 189 defendants with sex trafficking, an increase of more than 450 percent over the previous five years." Given that the Trafficking Victims Protection Act – which created several new statutes to combat sex trafficking – wasn't passed by Congress and signed into law by President Clinton until October 2000, and given the fact that the Civil Rights Division had fewer prosecutors in the Clinton Administration than in this one, isn't the data used in the Gonzales testimony unfair and misleading?

Answer: Human trafficking is a modern day form of slavery, involving the exploitation and enslavement of society's most vulnerable members – often minority women and children who are poor, are frequently unemployed or underemployed, and lack access to social safety nets. It ranks among the world's most vile and degrading criminal practices. Human trafficking offenses transgress the victims' human liberty in violation of the Thirteenth Amendment's guarantee of freedom. As such, trafficking offends the core civil rights on which our Constitution and our country are based. The Civil Rights Division has long prosecuted human trafficking violations.

Congress showed great leadership by enacting the Trafficking Victims Protection Act of 2000, which provided additional tools to supplement the existing statutory framework for prosecuting these horrible offenses. Early in this Administration, the President identified the eradication of human trafficking as a priority. Two particular actions by the President focused federal resources on trafficking. First, in February 2002, the President issued Executive Order 13257, creating a cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons. Second, in February 2003, the White House released National Security Presidential Directive 22 (NSPD-22) to identify human trafficking as an important national security matter as well as to instruct federal agencies to strengthen their collective efforts, capabilities, and coordination to support the President's goal of abolishing human trafficking. The February 2003 NSPD-22 created a three-point plan of action: implementing training in federal agencies, developing cooperation with state and local law enforcement in the United States, and integrating and coordinating international programs.

As the Attorney General has noted, the Department of Justice has greatly increased the investigation and prosecution of human trafficking offenses. Indeed, the Department made eradication of human trafficking a priority through several proactive initiatives, including holding hundreds of intensive training and awareness raising events; forming forty-two United States Attorney-led Task Forces; convening those task forces into three national training conferences; developing a comprehensive curriculum; developing a series of federal, state, and local partnerships that pool the assets of law enforcement; forming a special trafficking unit of specialists and experts; developing a closed circuit television communications capacity to conduct best practices discussions with Task Forces; and developing numerous law enforcement tools and resources that empower practitioners. The President and the Attorney General also have devoted substantial time to public speaking at national anti-trafficking events.

In Fiscal Year 2006, the Division continued to aggressively pursue those who commit human trafficking crimes, obtaining a record ninety-eight convictions of human trafficking defendants. Working with the various United States Attorneys' Offices, we charged a record number of sex trafficking defendants (eighty-five) and twenty-six labor trafficking defendants. In addition to prosecuting the perpetrators of these horrible crimes, the Criminal Section also aids their victims. Under the 2000 Trafficking Victims Protection Act, 1,123 trafficking victims from seventy-two countries have obtained eligibility for refugee-type benefits from HHS with the aid of the Civil Rights Division and other law enforcement agencies.

22. You testified that in FY 2006, the Justice Department charged 85 sex trafficking defendants and 26 labor trafficking defendants. Why did the Justice Department bring over three times as many sex trafficking cases as labor trafficking cases? Does the Department receive over three times as many sex trafficking allegations as labor trafficking allegations? Does the Department place greater value on sex trafficking cases than labor trafficking cases?

Answer: The prosecution of the despicable crime of human trafficking continues to be a major element of our Criminal Section's work. The victims of human trafficking are often minority women and children who are poor, are frequently unemployed or underemployed, and lack access to social safety nets. The Attorney General's initiative to combat human trafficking has made the prosecution of these crimes a top priority. The Division does not place a greater value on any specific type of human trafficking allegation or case. The Division works with the United States Attorneys' Offices, federal, state, and local law enforcement, and non-governmental organizations to aggressively investigate and prosecute all meritorious human trafficking allegations.

In Fiscal Year 2006, the Division continued to aggressively pursue those who commit human trafficking crimes, obtaining a record ninety-eight convictions of human trafficking defendants. Working with the various United States Attorneys' Offices, we charged a record number of sex trafficking defendants (eighty-five) and

twenty-six labor trafficking defendants. In addition to prosecuting the perpetrators of these horrible crimes, the Criminal Section also aids their victims. Under the 2000 Trafficking Victims Protection Act, 1123 trafficking victims from seventy-two countries have obtained eligibility for refugee-type benefits from HHS with the aid of the Civil Rights Division and other law enforcement agencies.

23. Please provide data regarding the number of criminal civil rights defendants charged and convicted each year for the past three years, indicating whether the prosecutions involved laws regarding hate crimes, human trafficking (broken down by sex trafficking and labor trafficking), law enforcement misconduct, and the Freedom of Access to Clinic Entrances Act.

Answer: In FY 2004, the Criminal Section of the Civil Rights Division charged a total of 156 defendants. Of those defendants, sixty-six were charged with color of law crimes, thirty-eight were charged with bias crimes, four were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, forty were charged with sex trafficking crimes, and seven were charged with labor trafficking crimes. In FY 2004, the Criminal Section convicted a total of 112 defendants. Of those defendants convicted, forty-eight were convicted of color of law crimes, twenty-six were convicted of bias crimes, three were convicted of damage of a house of worship crimes, two were convicted of FACE Act violations, thirty were convicted of sex trafficking crimes, and three were convicted of labor trafficking crimes.

In FY 2005, the Criminal Section of the Civil Rights Division charged a total of 168 defendants. Of those defendants, forty-five were charged with color of law crimes, sixteen were charged with bias crimes, ten were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, seventy-five were charged with sex trafficking crimes, and twenty-one were charged with labor trafficking crimes. In FY 2005, the Criminal Section convicted a total of 109 defendants. Of those defendants convicted, fifty-six were convicted of color of law crimes, thirteen were convicted of bias crimes, four were convicted of damage of a house of worship crimes, one was convicted of a FACE Act violation, twenty-five were convicted of sex trafficking crimes, and ten were convicted of labor trafficking crimes.

In FY 2006, the Criminal Section of the Civil Rights Division charged a total of 200 defendants. Of those defendants, sixty-six were charged with color of law crimes, twenty were charged with bias crimes, two were charged with damage of a house of worship crimes, one was charged with a FACE Act violation, eighty-five were charged with sex trafficking crimes, and twenty-six were charged with labor trafficking crimes. In FY 2006, the Criminal Section convicted a total of 180 defendants. Of those defendants convicted, fifty-five were convicted of color of law crimes, nineteen were convicted of bias crimes, seven were convicted of damage of a house of worship crimes, one was convicted of a FACE Act violation, sixty were

convicted of sex trafficking crimes, and thirty-eight were convicted of labor trafficking crimes.

Appellate filings

24. You testified that 87 of 144 briefs, over 60% of all briefs, filed by the Civil Rights Division's Appellate Section in FY 2006 were in defense of decisions made by the U.S. government to deport illegal immigrants. In FY 2005, 62% of all briefs filed by the Division's Appellate Section were in deportation defense cases.

A. Are you at all concerned about this trend? Please explain.

Answer: Attorneys in all of the Department's litigating Divisions and every United States Attorney's Office are assisting in handling the extraordinary caseload of immigration briefs. While the Civil Rights Division shares in these responsibilities as well, the Division's Appellate Section is still doing tremendous work. Overall during FY 2006, the Appellate Section filed more briefs than in any year in the Division's recorded history. During FY 2006, the Division's Appellate Section filed 145 briefs and substantive papers in the United States Supreme Court, the courts of appeals, and the district courts. (The total number that I provided previously inadvertently failed to include an amicus brief the Division had filed jointly with the United States Attorney's Office for the Southern District of New York.) As you note, 87 of these filings were appellate briefs for the Office of Immigration Litigation (OIL). Excluding OIL decisions, the Appellate Section had an overall success rate of 90% during this period, which is the highest success rate the Section has had for any fiscal year since FY 1992. In FY 2006, the Appellate Section filed 17 amicus briefs, an increase over the previous two fiscal years. As of January 5, 2007, the Appellate Section had filed a total of 94 amicus briefs under this Administration.

B. When is the Division's Appellate Section going to be able to return to its mission of filing briefs to enforce civil rights laws rather than to deport illegal immigrants? Can you provide a commitment as to when the Civil Rights Division attorneys will no longer have to work on such cases?

Answer: As stated above, attorneys in all of the Department's litigating Divisions and every United States Attorney's Office are assisting in handling the extraordinary caseload of immigration briefs, and that practice extends to the Civil Rights Division as well. The Department will not shirk from its responsibility to enforce the immigration laws passed by Congress. Until OIL has sufficient staff to manage the overwhelming workload, the Department must continue to share this responsibility. The Department is seeking to augment staffing and resource levels such that OIL ultimately will have sufficient staff to assume responsibility for all cases, including the

Second Circuit cases formerly handled by SDNY. In this regard, OIL received a significant budget increase for the fiscal year that ended September 30, 2006. In addition, the President has sought another substantial budget increase for OIL in FY 2007 and FY 2008.

C. Please provide information about the number of Civil Rights Division attorney hours spent working on deportation appeals in FY 2006.

Answer: According to our time-keeping records, Civil Rights Division attorneys spent a total of 19,329.75 hours on Office of Immigration Litigation cases in FY 2006. This represents 5.4% of the hours worked by Division attorneys during FY 2006.

25. If 87 of the 144 briefs filed by the Appellate Section concerned deportations, then only 57 briefs and substantive papers were filed in FY 2006. According to data you provided to the Judiciary Committee last year, 57 substantive appellate filings represents by far the lowest number of such filings since at least 1990, and perhaps in the history of the Division. Please provide an explanation for the historic low number of substantive appellate filings in FY 2006.

Answer: Attorneys in all of the Department's litigating Divisions and every United States Attorney's Office are assisting in handling the extraordinary caseload of immigration briefs. While the Civil Rights Division shares in these responsibilities as well, the Division's Appellate Section is still doing tremendous work. Overall during FY 2006, the Appellate Section filed more briefs than in any year in the Division's recorded history. During FY 2006, the Division's Appellate Section filed 145 briefs and substantive papers in the United States Supreme Court, the courts of appeals, and the district courts. (The total number that I provided previously inadvertently failed to include an amicus brief the Division had filed jointly with the United States Attorney's Office for the Southern District of New York.) As you note, 87 of these filings were appellate briefs for the Office of Immigration Litigation (OIL). Excluding OIL decisions, the Appellate Section had an overall success rate of 90% during this period, which is the highest success rate the Section has had for any fiscal year since FY 1992. In FY 2006, the Appellate Section filed 17 amicus briefs, an increase over the previous two fiscal years. As of January 5, 2007, the Appellate Section had filed a total of 94 amicus briefs under this Administration.

26. In your testimony, you stated the Civil Rights Division has filed amicus briefs in 94 cases during the Bush Administration. Please provide a brief description of each of these 94 cases, and the position advanced by the Division, broken down by year.

Answer: Please see attachment.

27. Please provide a brief description of each instance during the past six years in which section management within the Civil Rights Division recommended amicus participation

in a district court or appellate court case, and the recommendation was rejected, and provide an explanation as to why the amicus recommendation was rejected.

Answer: The Department has a long-standing policy against the disclosure of internal deliberations.

<u>Disability rights</u>

28. In your November 16 testimony, you discussed the Civil Rights Division's efforts to enforce the Americans with Disabilities Act and to safeguard the rights of the disabled. However, there is no mention of the mentally disabled in your testimony regarding ADA enforcement; instead, you report only on efforts made to assist people with physical disabilities.

A. Please indicate the number of cases brought and settlement agreements reached by the Disability Rights Section on behalf of people with mental disabilities for each year during the past six years.

Answer: The Civil Rights Division is firmly committed to protecting the rights of persons with mental disabilities. In enforcing the Americans with Disabilities Act of 1990 (ADA) during the past six years, the Disability Rights Section achieved consent decrees or settlement agreements in eleven matters involving persons with mental disabilities. The Disability Rights Section filed complaints in four cases that were resolved by consent decree and settled seven matters without filing complaints.

The Division continues to vindicate the rights of persons with mental disabilities under other statutes in addition to the ADA. For example, since 2001, the Special Litigation Section has incorporated provisions protecting the rights of persons with mental disabilities in thirty-seven enforcement actions under the Civil Rights of Institutionalized Persons Act. The Section filed complaints in twenty-three cases that were resolved by consent decree or by Rule 41 order. The Section settled fourteen matters without filing complaints.

In addition, since 2001 the Housing and Civil Enforcement Section has filed eighteen cases in which mental disability was one of several grounds of alleged discrimination. Over the same period, the Section settled nineteen cases in which mental disability was one of the grounds of alleged discrimination.

B. Please indicate all instances during the past six years in which career attorneys in the Disability Rights Section recommended bringing a federal lawsuit on behalf of a person with a mental disability, and the political appointees in the Civil Rights Division front office rejected the request.

Please discuss the nature of each recommendation and explain why the recommendation was rejected.

Answer: Disclosure of the requested information would violate the Department's long standing policy against revealing internal deliberations.

<u>Voting rights</u>

29. In your November 16 testimony, you indicated that 229 complaints about election procedures were made directly to the Voting Section on election day, November 7, 2006.

C. Please provide a description and status report of all complaints the Civil Rights Division is continuing to investigate that were made to your office on November 7, 2006.

Answer: In November 2006, the Department opened multiple phone lines in order to handle calls from citizens with election complaints, as well as an internet-based system for reporting problems. On or about November 7, 2006, the Voting Section received approximately 147 calls and 94 e-mail contacts through its website. These 241 election day contacts raised approximately 351 issues, as some contacts raised multiple issues.

On election day, we were able to resolve all issues raised by approximately 36 of the 241 election day contacts we received. Of the additional election day contacts, 6 simply provided comments, and 7 persons contacting us sought only election-related information, such as where they should go to vote.

The information provided to us by approximately 150 of these election day contacts did not indicate a possible violation of any of the federal laws the Department enforces. For example, a number of voters called complaining about an isolated mechanical failure of an individual piece of voting equipment.

As a result of pre-election investigation and outreach, the Department assigned more than 800 federal observers and Department monitors to selected polling places across the country. Approximately 470 federal observers from the Office of Personnel Management and 358 Department of Justice staff monitored the general election in 69 jurisdictions in 22 states in areas that we determined warranted scrutiny in order to prevent and document possible violations of voting rights. Election monitoring, among other things, involved receiving numerous calls and contacts within the course of the site monitoring. Consistent with past practice, Department personnel addressed and documented potentially discriminatory practices regardless of whether they were the subject of a formal complaint.

After Election Day, we reviewed all complaints and determined which matters warranted additional action. We have since initiated new investigations of these matters or incorporated them into ongoing investigations in the relevant jurisdiction. Any comment on these current investigations would be inappropriate at this time.

The Criminal Section of the Civil Rights Division has three matters related to the November 7, 2006, election under investigation. The first is the cross burning in Grand Coteau, Louisiana. The second is the mailing of misleading letters in Orange County, California. The third is the presence of armed men at the polls in Pima County, Arizona. The basis for each investigation is the allegation that persons attempted to intimidate voters because they were exercising their right to vote and because of their race or national origin. The investigations are continuing, and further comment would be inappropriate at this time. We are also monitoring a local investigation into allegations that two residents of Swain County, North Carolina, were forced to apply for absentee ballots and vote a straight Democratic ticket or be evicted from their trailer park.

D. Please provide a description and status report of all election day complaints the Civil Rights Division is investigating that you learned about through other means – e.g. news articles, letters from community groups, etc.

Answer: The Department in 2006 took a strong proactive approach to potential election day problems and issues. Rather than wait for complaints, the Voting Section attempted to identify locations where problems were likely to occur and to pre-position personnel to document and address such issues as arise on election day. As a result of this extensive pre-election investigation and outreach, on election day the Department assigned more than 800 federal observers and Department monitors – a record number for a mid-term election – to selected polling places in 69 jurisdictions in 22 states across the country. The Department continues, as it becomes aware of complaints from other sources that had not already come to its attention, such as through news articles or post election day contacts from civil rights or community organizations, to investigate complaints arising from the November 2006 elections. As you are aware, we cannot discuss the details of ongoing investigations.

E. Please provide a description and status report of all pre-election day complaints you are investigating in connection with the 2006 federal election.

Answer: **Please see responses to subparts C and D above.**

F. Please provide a description and status report of all election day complaints or pre-election complaints involving the November 7, 2006 election that the Criminal Division is investigating. Please indicate why the matter is being investigated by the Criminal Division rather than the Civil Rights Division.

Answer: As previously noted, whether a matter is being handled by the CRT or being investigated by the Criminal Division and a United States Attorney's Office depends on the nature of the allegations in a particular case. We are aware of at least 25 criminal matters that are currently under investigation around the country by the Criminal Division and various United States Attorneys' Offices. However, because Department procedures do not require United States Attorneys' Offices to consult with Headquarters before requesting a preliminary investigation of an election fraud allegation, the actual figure may be higher. As these criminal investigations are currently open, it would not be appropriate to comment on them.

Backlash initiative

30. After the September 11th terrorist attacks, then-Assistant Attorney General for Civil Rights Ralph F. Boyd, Jr. established the Initiative to Combat Post-9/11 Discriminatory Backlash to work proactively to combat violations of civil rights laws against Arab, Muslim, Sikh, and South-Asian Americans, and those perceived to be members of these groups. Mr. Boyd appointed a Special Counsel on Post-9/11 National Origin Discrimination to head the Initiative. It is my understanding that this Special Counsel position is currently vacant.

A. How long has this Special Counsel position been vacant? Do you intend to fill the position?

Answer: On January 21, 2006, the attorney who served as Special Counsel on Post-9/11 National Origin Discrimination left the Department to accept a civil rights position with the Department of Homeland Security, where he continues to work closely with the Division on these important issues. On December 12, 2005, the Assistant Attorney General hired an attorney for his staff who speaks Arabic and has extensive educational and professional experience with the Middle East and Islam. This individual does not use the title "Special Counsel on Post-9/11 National Origin Discrimination." However, he helps coordinate the Division's efforts to counter post-9/11 backlash and the Division's outreach to the affected communities. He works on these issues jointly with the Special Counsel for Religious Discrimination, an individual on the Assistant Attorney General's staff with more than twelve years of experience representing individuals of various faiths, including Muslims and Sikhs, in religious discrimination matters.

B. Please describe the activities of this Initiative since you were confirmed.

Answer: Since my confirmation on November 13, 2005, the Division has continued to place a priority on addressing discrimination and hate crimes

against individuals resulting from post-9/11 backlash. We have opened 53 investigations of backlash-related hate crimes since that time, and brought one prosecution, involving vandalism of a mosque in northern Virginia. We have had continued success in our ongoing prosecutions during this time. For example, in *United States v. Nix and Alba* (N.D. Ill.), we obtained a fifteen month prison sentence on August 22, 2006, for a man who ignited a commercial firework device in a Palestinian-American family's minivan in Illinois. An accomplice who provided the device received six months home confinement on March 6, 2006. Similarly, in *United States v. Russell and Lin* (W.D. Wash.), we obtained prison sentences of three months each on April 7, 2006, and June 2, 2006, respectively, for two men who burned a cross at the home of an Arab-American family.

In the area of education, we opened eight investigations of harassment of or discrimination against Muslim students during FY 2006, of a total of thirteen such investigations since 9/11. Six of these eight investigations were closed upon a determination that there was no violation of federal law, and two are pending.

We have continued to litigate actively a case against the New York Metropolitan Transit Authority regarding its refusal to permit Muslim women and Sikh men to wear religious head coverings while working as bus and subway drivers. I have instructed all of our sections to continue to look actively for cases involving backlash discrimination.

The Division also has engaged in extensive outreach to the affected communities. I personally chair a meeting every two months that brings together representatives from various federal agencies with leaders from the Muslim, Arab, Sikh and South Asian communities to address civil rights and civil liberties concerns. These meetings have been highly successful in matching problems with the key government representatives necessary to address them. Additionally, I have spoken at a variety of fora on backlash issues, including delivering the keynote address at the American Arab Anti-Discrimination Committee annual convention and addressing the Detroit Bridges meeting – a regionally-based interagency meeting co-hosted by DHS, the U.S. Attorney's Office, and the FBI that is similar to the one I hold here in Washington.

Senior Division personnel have also actively reached out to these communities. For example, in 2006, the chief of our Voting Section met with Arab and Muslim leaders in Michigan to learn about their concerns. In addition, an attorney on my staff who is involved with the backlash initiative staffed a booth at the Islamic Society of North America annual convention to listen to community concerns. Also, our Special Counsel for Religious Discrimination spoke at the law student convention of the National Association of Muslim Lawyers. Attorneys on my staff are in regular contact

with Muslim, Arab, Sikh, and South Asian groups to address civil rights issues as they arise.

C. On August 20, 2004, then-Assistant Attorney General R. Alexander Acosta sent a letter to state Departments of Education raising concerns about incidents of discrimination directed against Muslim, Arab, Sikh, and South-Asian students and asking them to inform school officials that such discrimination is illegal. Please describe any similar proactive outreach you have made in order to alleviate post-9/11 discrimination against these vulnerable groups.

Answer: As set forth in my response to B above, the Division has been proactive in reaching out to the Muslim, Arab, Sikh, and South Asian communities in a variety of ways, including regular meetings, frequent speaking engagements, and open channels of communication.

31. According to the Civil Rights Division's website: "The Civil Rights Division, the Federal Bureau of Investigation, and United States Attorneys offices have investigated 742 incidents since 9/11 involving violence, threats, vandalism and arson against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin.... Federal charges have been brought in 27 cases against 35 defendants, with 32 convictions to date."

A. The webpage indicates that it was last updated on August 16, 2006. Please provide updated statistics on the number of incidents and cases.

Answer: As of January 9, 2007, the Civil Rights Division, the Federal Bureau of Investigation, and United States Attorneys' offices have investigated over 762 incidents since 9/11 involving violence, threats, vandalism and arson against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin. The incidents have consisted of telephone, internet, mail, and face-to-face threats; minor assaults as well as assaults with dangerous weapons and assaults resulting in serious injury and death; and vandalism, shootings, arson and bombings directed at homes, businesses, and places of worship.

Federal charges have been brought in 27 cases against 35 defendants, with 32 convictions to date. Additionally, Civil Rights Division attorneys have coordinated with state and local prosecutors in over 150 non-federal criminal prosecutions, in many cases providing substantial assistance.

B. The webpage provides summaries of eight cases. Please provide summaries of the remaining cases, including a description of the incident, the date of the incident and the current status of the case.

Answer: The Civil Rights Division has placed a priority on prosecuting bias crimes and incidents of discrimination against Muslims, Sikhs, and persons of Arab and South-Asian descent, as well as persons perceived to be

members of these groups. As noted above, federal charges have been brought in 27 cases against 35 defendants, with 32 convictions to date. A representative sample of eight cases, involving eleven defendants, is described on our website. The remaining cases include:

- ***United States v. Labana* (E.D. Va.): On May 10, 2006, Manjit Labana was indicted on charges of damaging religious property. On September 13, 2001, Labana allegedly spray-painted threatening messages and profanity on the walls, doors and carpets of the All Dulles Area Muslim Society Center Mosque. Presently, he is a fugitive and is believed to have fled the United States.**

- ***United States v. Oakley* (D.D.C.): On April 7, 2006, Max Oakley pleaded guilty to sending threats by an instrument of interstate commerce. On July 25, 2005, Oakley emailed a bomb threat to the headquarters of the Council on American-Islamic Relations in Washington, D.C. On July 20, 2006, he was sentenced to three years probation and fined $1000.**

- ***United States v. Barnett* (E.D. Mich.): On November 15, 2005, John Barnett pleaded guilty to interference with the religious exercise of worshippers of a mosque. On May 12, 2004, Barnett sent an e-mail threat to the Islamic Center of America in Detroit from his home in New York. Barnett died prior to sentencing.**

- ***United States v. Bratisax* (E.D. Mich.): On November 9, 2005, Michael Bratisax pleaded guilty to interference with the religious exercise of worshippers of a mosque. On May 12, 2004, Bratisax sent two threatening emails to the Islamic Center of America in Detroit from his home in New York. On March 13, 2006, he was sentenced to two years probation, with conditions including attending anger management and diversity training, refraining from drinking alcohol, submitting to random drug and alcohol testing, and creating a website dedicated to anger management and diversity.**

- ***United States v. Nix and Alba* (N.D. Ill.): On November 2, 2005, Daniel Alba pleaded guilty to making false statements in the course of a federal investigation. Alba lied about his knowledge of an incident where another man, Eric Nix, planted an explosive device in a van owned by a Muslim family of Palestinian descent while the van was parked outside the family's home in Burbank, Illinois. The bomb exploded, terrifying the family and destroying the vehicle. On March 14, 2006, Alba was sentenced to six months home confinement.**

- ***United States v. Razani* (C.D. Cal.): On October 3, 2005, Tony Razani pleaded guilty to transmitting a threat by interstate communication. On September 25, 2002, Razani sent an email containing racially derogatory**

language and an explicit death threat to an Arab-American woman. On April 3, 2006, he was sentenced to six months home detention and three years probation.

- ***United States v. Sargent, Lin, and Russel* (W.D. Wash.): On July 19, 2005, Collin Patrick Sargent pleaded guilty to conspiracy to interfere with housing rights. In July 2004, a group of individuals burned a cross in the yard of an Arab-American family in Edmonds, Washington. On February 17, 2006, Sargent was sentenced to three months home detention, three years of probation, and community service. On December 13, 2005, Joseph Lin pleaded guilty to conspiracy with another man, Jaysen Russel, to mislead a grand jury about their participation in the cross burning. On April 7, 2006, Lin was sentenced to three months in prison and three months of supervised release. On February 1, 2006, Russel pleaded guilty to conspiracy to mislead a grand jury. On June 2, 2006, he was sentenced to three months in prison and three months of supervised release.**
- ***United States v. Stern* (D. Nev.): On May 16, 2005, Leonard Arthur Stern pleaded guilty to transmitting a threat by interstate communication. On September 16, 2001, Stern sent a threatening email to an Arab-American. He later lied to federal investigators about his actions. On November 28, 2005, he was sentenced to six months home confinement, five years probation, and a $3000 fine.**

- ***United States v. Middleman* (D.D.C.): On January 26, 2005, Daniel Middleman pleaded guilty to transmitting threats by interstate communication. On April 25, 2003, Middleman sent a threatening email to the President of the Arab-American Institute in Washington, D.C. On May 9, 2003, he sent a second threatening email. On October 14, 2005, he was sentenced to ten months in prison.**

- ***United States v. Ehrgott* (D. Nev.): On January 13, 2005, Dale T. Ehrgott pleaded guilty to interference by threat of force with federally protected activities. On August 28, 2003, Ehrgott sent a threatening email to the Washington, D.C., office of the Council on American-Islamic Relations from Reno. On January 13, 2005, he was sentenced to a year of probation and fifty hours community service.**

- ***United States v. Doyle* (D. Neb.): On November 17, 2004, George M. Doyle pleaded guilty to interference with the religious exercise of worshippers of a mosque. On May 11, 2004, Doyle left threatening voice mail messages on the answering machine of the Islamic Center of Omaha. On November 17, 2004, he was sentenced to ten days incarceration and ordered to apologize to the victims.**

- ***United States v. Murrillo* (E.D. Tex.): On November 10, 2004, Curtis William Murrillo was acquitted of charges of interference by use of force with federally protected activities. On March 17, 2002, Curtis William Murrillo allegedly assaulted an Iranian-American man who was a patron at a McDonald's restaurant.**

- ***United States v. Bjarnason* (W.D. Tex.): On September 30, 2004, Jared Bjarnason pleaded guilty to interference with the religious exercise of worshippers of a mosque and transmitting threats by interstate communication. On April 4, 2004, Bjarnason emailed the Islamic Center of El Paso, Texas, and threatened to burn down the mosque if American hostages held in Iraq were not released within seventy-two hours. Using a provision of the USA PATRIOT Act, federal agents were able to identify Bjarnason as the sender before the seventy-two hour period had expired. On December 21, 2004, he was sentenced to eighteen months imprisonment.**

- ***United States v. Krugel and Rubin* (C.D. Cal.): On February 4, 2003, Earl Krugel, a member of the Jewish Defense League, pleaded guilty to conspiracy. In December 2001, Krugel and Irving Rubin conspired to bomb a mosque and the field offices of the Muslim Political Affairs Council and United States Congressman Darrel Issa in California. On November 13, 2002, Rubin died from a self-inflicted injury in jail. On September 22, 2005, Krugel was sentenced to twenty years in prison.**

- ***United States v. Warden* (E.D. Tex.): On October 15, 2002, Norman Lee Warden pleaded guilty to illegal possession of a firearm by a felon. On May 27, 2002, Warden set fire to gas pumps located at a convenience store owned by a Middle Eastern man. Warden also left a threatening note at the scene. On January 23, 2003, he was sentenced to thirty-seven months in prison. In a subsequent local prosecution of the incident, Warden pleaded guilty to additional charges and received a sixteen year prison sentence.**

- ***United States v. Kitts and Kitts* (E.D. Tenn.): On September 11, 2002, Jason Kitts and Travis Kitts pleaded guilty to interference by use of force with federally protected activities. On September 24, 2001, the two men assaulted two Indian resident managers of a motel in Alcoa, Tennessee. On December 10, 2002, Travis Kitts was sentenced to thirty-six months in prison and Jason Kitts was sentenced to twenty months in prison.**

- ***United States v. Fritts* (W.D. Wisc.): On March 4, 2002, Wesley Fritts pleaded guilty to mailing threatening communications. On October 17, 2001, Fritts mailed fake anthrax and a threat to an Arab-American restaurant in Janesville, Wisconsin. On May 13, 2002, he was sentenced to twenty-one months incarceration.**

- ***United States v. Bolen* (E.D. Mich.): On February 6, 2002, Justin Bolen pleaded guilty to interference with housing rights. On October 10, 2001, Bolen placed a telephone call to a Pakistani family's home in Detroit and left a threatening message on their voicemail. On May 14, 2002, he was sentenced to ten months incarceration.**

- ***United States v. Iverson* (W.D. Wisc.): On January 31, 2002, Thomas Iverson pleaded guilty to transmitting threats by an instrument of interstate commerce. On September 29, 2001, Iverson telephoned bomb threats to the Jordanian owner of a liquor store and to a 911 emergency operator in Beloit, Wisconsin. On April 12, 2002, he was sentenced to twenty-seven months incarceration. In a subsequent local prosecution, he pleaded guilty to a state hate crime and received an additional two year sentence of incarceration.**

- ***United States v. Montes* (W.D. Tex.): On December 4, 2001, Joe Luis Montes pleaded guilty to making obscene or harassing phone calls. On September 17, 2001, Montes threatened Indian employees of a truck stop in Hewitt during a phone call. On January 30, 2002, he was sentenced to two years probation and given a $500 fine.**

32. The Civil Rights Division's website states: "All of the Civil Rights Division's litigating sections (such as the Employment Litigation Section, the Educational Opportunities Section, the Housing and Civil Enforcement Section) have put a priority on investigating allegations of discrimination against Muslims, Sikhs, Arab-Americans, South-Asian Americans, and others perceived to be members of these groups. Many such complaints have been handled by the Civil Rights Division and resolved informally. A number of complaints have resulted in the Civil Rights Division filing suits or reaching formal settlements." The webpage provides summaries of six cases. Please provide summaries of the remaining cases, including a description of the incident and the current status of the case.

Answer: The Civil Rights Division has investigated allegations of discrimination against Muslims, Sikhs, Arab-Americans, South-Asian Americans, and others perceived to be members of these groups. As noted above, information on a representative sample of six of these cases can be found on our website. The remaining cases include:

- **In a matter involving an allegation of education discrimination in a southern state, the Division investigated a complaint of harassment of a Muslim elementary student. After cooperation by the school district with our inquiry, it was determined that remedial action had been taken and there was no violation of federal law.**

- **In a matter involving an allegation of discrimination in a western state, the Division began investigating a complaint by Muslim college students that they were harassed by a sports team coach and dismissed from the team because of their religion. The Division's investigation is ongoing.**

- **In *Guru Nanak Sikh Society v. County of Sutter*, the Division filed an amicus brief in the Ninth Circuit arguing that Sutter County, California, violated RLUIPA when it denied a Sikh congregation the use permit necessary to build a gurdwara. The Ninth Circuit agreed and ruled in the congregation's favor.**

- **The Division reached a settlement with the City of Plano, Texas, to accommodate the needs of a Muslim school bus driver to attend Friday religious services.**

- **In six separate matters involving allegations of education discrimination in western states, the Division investigated published reports of harassment of Muslim high school students by other students. After reviewing information provided by the districts and finding no evidence of violations of federal law, the Division closed these investigations.**

- **In a matter involving an allegation of education discrimination in a southern state, the Division investigated a complaint of harassment of a Muslim student by an instructor at a community college. After cooperation by the college in our inquiry, it was determined that remedial action had been taken and the complainant was satisfied with the results.**

- **In a matter involving an allegation of education discrimination in a Western state, the Division investigated a complaint by a Muslim student that his high school refused to accommodate his religious dress at his graduation ceremony. After our inquiry, the high school reversed its course and allowed the student to attend while wearing his religious dress.**

- **In a matter involving an allegation of education discrimination in a southern state, the Division investigated a report of harassment of Muslim students by a teacher at a high school. After cooperation by the school district in our inquiry, it was determined that remedial action had been taken and there was no violation of federal law.**

- **In a matter involving an allegation of education discrimination in a northeastern state, the Division investigated a complaint by a high school student who withdrew from a magnet school because she was not permitted to wear her hijab with her junior ROTC uniform. The case was closed after it was determined that the school was following Department of Defense regulations.**

- **In July 2004, the Division opened a Religious Land Use and Institutionalized Persons Act (RLUIPA) investigation in a municipality in the southeastern United States after a mosque was denied a variance to build in excess of the**

height limit specified in the zoning code. The Division closed its investigation in February 2005 after finding no bias or discrimination involved.

- **In December 2003, the Division investigated a matter involving access to public accommodations in which a Sikh man was denied entry into two restaurants in the northeast owned by the same individual when he would not remove his turban. The investigation determined that the owner had already taken remedial action.**

- **In December 2003, the Division investigated a matter involving access to public accommodations in which a Sikh man was denied access to a shooting range because of his turban. The investigation was closed when it was determined that the owner took remedial action.**

- **In December 2003, the Division opened an investigation under RLUIPA after the City of Morton Grove, Illinois, amidst heated community opposition that involved some open expressions of anti-Muslim sentiment, denied a Muslim school a permit to build a mosque. With the help of mediators from the Department's Community Relations Service, the village and the school reached an agreement in 2004 to allow the mosque's construction with conditions to address traffic and parking.**

- **In December 2002, the Division opened an RLUIPA investigation in Loudon County, Virginia, after a K through 12 Islamic school was denied a permit necessary for its building plans and evidence indicated that the denial was due in part to anti-Muslim sentiment. One month later, the county reversed itself and issued the permit.**

33. How many complaints has the Civil Rights Division received regarding discriminatory law enforcement against Muslims, Sikhs, Arab-Americans, South-Asian Americans, and others perceived to be members of these groups? How many investigations has the Division opened regarding discriminatory law enforcement against Muslims, Sikhs, Arab-Americans, South-Asian Americans, and others perceived to be members of these groups?

Answer: The Division enforces 18 U.S.C. § 242, which prohibits official misconduct committed under color of law. We have investigated 50 cases alleging official misconduct committed under the color of law where the victim was Middle Eastern, South Asian, Arab, Muslim or Sikh. These investigations involved allegations that police or prison guards used excessive force or otherwise deprived an individual of due process of law. Such conduct, when committed with willful intent, can be a violation of federal law.

Additionally, the Office of the Assistant Attorney General on a number of occasions has received inquiries by phone or email from community contacts regarding alleged discrimination by federal law enforcement officials. We have assisted these

contacts in locating the proper federal agency with which to file a complaint. We do not keep any formal record of such contacts or responses.

Religious liberty

34. The Civil Rights Division recently filed an amicus brief in the case Lown v. Salvation Army. In that brief, the United States contended that, even though the Salvation Army receives direct government funding, it could not be a state actor and therefore could not violate the Establishment and Equal Protection Clauses in discriminating on the basis of religion in government-funded Salvation Army jobs. Is this the first time the Civil Rights Division has ever filed a brief in federal court contending that government-funded religious discrimination is lawful and does not implicate Establishment Clause concerns? If not, please provide other instances in which the Division has taken this position.

Answer: In the *Lown v. Salvation Army* case, the Division filed a brief for the United States arguing that the Establishment Clause was not violated merely because a party contracting with the state to provide secular social services was a religious employer eligible for Title VII's Section 702 exemption, which permits religious employers to consider religion in hiring decisions. The district court agreed with the position advocated by the United States in its ruling on September 30, 2005. We are not aware of any other case in which the Division has filed a brief on this issue.

35. Over the past several years, the Civil Rights Division has filed a number of amicus briefs in support of the Child Evangelism Fellowship in its efforts to distribute evangelical religious materials to public school students and their families. Prior to this initiative, the Civil Rights Division rarely intervened in cases in which it did not have statutory enforcement power.

A. Why is the Civil Rights Division intervening in Child Evangelism Fellowship cases and other individual Establishment Clause cases that do not implicate federal statutory enforcement power and do not involve the federal government as a defendant?

Answer: Under Title IV of the Civil Rights Act of 1964, the Attorney General is authorized to file suit when a student is being "deprived by a school board of the equal protection of the laws." Additionally, Title IX of the Civil Rights Act of 1964 authorizes the Attorney General to intervene in any equal protection case filed in federal court that is of general public importance. For example, the Division intervened under Title IX in the case of a Muslim girl in Muskogee, Oklahoma, who was barred from wearing her headscarf because it conflicted with the school's dress code. Title III of the Civil Rights Act of 1964 also prohibits discrimination in public facilities on the basis of race, color, religion or national origin.

B. Please identify other cases in which the Civil Rights Division has intervened as an amicus where the Justice Department does not have statutory enforcement power.

Answer: The Division filed amicus briefs in the courts of appeals in *Child Evangelism Fellowship v. Montgomery County Public Schools* and *Child Evangelism Fellowship v. Stafford Township,* arguing that schools had discriminated based on religion against the after-school youth activities run by Child Evangelism Fellowship chapters by refusing to allow them to distribute their permission slips and informational flyers in the same manner that other youth-serving groups were allowed. These cases fell within the Division's statutory enforcement authority under Title IX, and raised substantially similar issues to those that arise in cases involving the Division's Title III and Title IV enforcement authority.

36. Many advocates of President Bush's faith-based initiative have argued that, under existing law, faith-based organizations do not have to comply with state and local civil rights laws, including those that protect against sexual orientation discrimination in employment. Do you support the view that faith-based organizations receiving direct grant funds may circumvent state and local anti-discrimination laws when those laws conflict with the desire to make staffing decisions based on religion and/or religious beliefs? Please explain.

Answer: The Civil Rights Division has not had occasion to take a position on this issue.