

Written Follow-up Questions of Senator Edward M. Kennedy to Grace Chung Becker, Nominee to the Civil Rights Division

Several of your answers to previous written questions were unresponsive, unclear, or insufficiently detailed. Please provide responses to the questions outlined below.

Torture

You spent a year as an advisor to William Haynes when he was General Counsel of the Defense Department. In light of Mr. Haynes's highly controversial role in formulating and justifying the Administration's policies on the treatment of detainees, I asked you in the previous round of questions, "Did any of the matters you worked on for Mr. Haynes involve the use of torture or other harsh techniques in interrogation of detainees?"

You replied: "Interrogation policies were set before I started working at the Department of Defense. In fact, the White House released documents regarding its interrogation policies nine months before I joined the Department of Defense General Counsel's Office. I did not work on revisions to the Army Field Manual's interrogation techniques."

The fact that interrogation policies may have been set before you started work at the Department, as you claim, does not mean you had no involvement in interrogation-related matters. Nor does the fact that the White House previously released documents regarding its interrogation policies have any bearing on your possible involvement in such matters. Indeed, your emphasis on White House disclosures was rather astounding, considering that the White House continues to withhold the vast majority of documents on its interrogation policies, despite repeated requests from Congress. The infamous 2003 torture memo produced by the Office of Legal Counsel for Mr. Haynes, authorizing military interrogators to use virtually any technique they wanted and advising them to ignore our criminal statutes on torture, was just released *last month*.

I also asked what legislative and congressional subjects you worked on as an advisor to Mr. Haynes. You replied that while working for Mr. Haynes, you "coordinated input among various DoD offices (including Judge Advocates General) on the McCain Amendment." As you know, the McCain Amendment is the most important piece of anti-torture legislation passed in recent years and certainly addresses torture and harsh interrogation techniques. The Amendment generally prohibits "cruel, inhuman, or degrading treatment" of detainees and specifically prohibits Defense Department use of interrogation techniques not authorized by the Army Field Manual. The Administration—including senior Defense Department officials—strongly opposed the McCain Amendment for many months, before President Bush ultimately asserted a constitutional right to defy the law in one of his most notorious signing statements.

You went on to say that you "helped prepare two DoD witnesses to testify before Congress concerning military commissions and Combatant Status Review Tribunals"—procedures that have been heavily criticized for their reliance on information obtained through coercive interrogation methods. You also said you "reviewed responses to certain Congressional questions regarding Mr. Haynes' nomination to the extent they related to matters on which I

worked during my tenure at DoD.” As you know, the major reason why Mr. Haynes’ nomination to the Fourth Circuit Court of Appeals was rejected was bipartisan concern about his role in approving torture. The “Congressional questions regarding [his] nomination,” which you apparently reviewed, focused almost entirely on torture.

As a *New York Times* editorial noted at the time: “William Haynes II, the Pentagon’s general counsel, has been closely involved in shaping some of the Bush administration’s most legally and morally objectionable policies, notably on the use of torture. . . . Mr. Haynes was by many accounts a key player in the administration’s development of its shamefully narrow definition of ‘torture,’ which gave the green light for a wide array of abuses.” Twenty retired military officers, including the former chief of staff to Secretary of State Colin Powell, came out publicly against Mr. Haynes’s nomination, because of their concern about the policies he had helped develop. These policies, wrote the officers, “compromised military values, ignored federal and international law, and damaged America’s reputation and world leadership.”

1. Since you failed to give a responsive answer last time, I want to give you another chance to answer my question: Did any of the matters you worked on for Mr. Haynes involve the use of torture or other harsh techniques in the interrogation of detainees? Please provide a detailed explanation of every matter you worked on that might in any way be construed to relate to the treatment or interrogation of detainees.

Answer: I apologize if I was unclear in my attempt to be fully forthcoming with the Committee. During my one-year tenure at the Department of Defense’s General Counsel’s Office as a career attorney, I did not set any interrogation policy. At that time, issues that “might in any way be construed to relate to the treatment or interrogation of detainees” arose daily in the media, litigation, legislative matters and DoD investigations. I tried to familiarize myself with these issues and worked on a number of short, discrete tasks, e.g., responding to correspondence related to these issues. I also worked on a variety of other unrelated matters, e.g., Freedom of Information Act, the Federal Advisory Committee Act, and copyright infringement.

2. What is the meaning of your statement that “the White House released documents regarding its interrogation policies nine months before I joined the Department of Defense General Counsel’s Office”? Which specific documents are you referring to and why are these documents relevant to my question?

Answer: On June 22, 2004, the White House released hundreds of pages of information regarding its interrogation policies and sent copies to the Senate Judiciary Committee. At that time, I was working on the staff of the Senate Judiciary Committee and not the Department of Defense. I do not have a copy of those documents; however, a summary was published in a local newspaper. See <http://www.washingtonpost.com/wp-dyn/articles/A62516-2004Jun22.html>.

3. What does it mean that you “coordinated input among various DoD offices . . . on the McCain Amendment”? Please explain in detail all of your activities relating to the McCain Amendment.

Answer: As a career attorney, I solicited comments and facilitated discussion on the proposed legislation from relevant DoD components with subject matter expertise, including Judge Advocates General.

4. Who were the two DoD witnesses whom you helped prepare to testify before Congress concerning military commissions and Combatant Status Review Tribunals? Please provide their testimony and their responses to any written questions, and explain in detail your role in preparing them.

Answer: I worked with other career and military attorneys to help prepare BG Thomas L. Hemingway and RADM James M. McGarrah to testify before Congress. A transcript of the hearing, their testimony and the written questions and responses are available at: <http://www.access.gpo.gov/congress/senate/pdf/109hrg/24332.pdf>

5. Please explain in detail the meaning of your remark that you “reviewed responses to certain Congressional questions regarding Mr. Haynes’ nomination to the extent they related to matters on which I worked during my tenure at DoD,” and provide a copy of all questions and responses that you reviewed. Did any of these questions or responses relate to interrogation, and did you contribute in any way to the content of Mr. Haynes’s statements to Congress regarding interrogation?

Answer: Although I do not have copies of any questions and draft responses that I reviewed, my recollection is that Mr. Haynes was asked questions related to interrogation, and I reviewed draft responses related to that topic. A transcript of the hearing, his testimony and the written questions and responses are available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:30496.pdf

6. Early last month, more than five years after it was issued, John Yoo’s March 2003 memo to Mr. Haynes on *Military Interrogation of Alien Unlawful Combatants Held Outside the United States* was finally disclosed. The memo provoked yet another round of international outrage over the Administration’s reckless and misleading legal approach to torture. What are your personal views on the legal analysis in this memo?

Answer: I was not involved in the writing of this memorandum. The Civil Rights Division is not involved in military interrogation of alien unlawful combatants held outside the United States. Our law enforcement efforts are focused domestically. This memorandum was issued by other components of the Justice Department. I understand that the Office of Legal Counsel withdrew the March 2003 memorandum several years ago after determining that its reasoning was flawed in several respects. The Department’s current views on the anti-torture statute can be found in the unclassified December 30, 2004 memorandum from Acting Assistant Attorney General Daniel Levin, which is publicly available.

7. What are your personal views more generally on the Bush Administration’s approach to the treatment and interrogation of detainees? Have you disagreed with any of the

Administration's policies or legal arguments on these matters, and if so, which ones and why?

Answer: The Civil Rights Division is not involved in the interrogation and treatment of alien unlawful combatants held outside the United States. I understand that, in the six and a half years following September 11, 2001, our Nation has had to make difficult choices in seeking policies that both protect the Nation and remain within the boundaries of the law. Not surprisingly, these policies have been the subject of vigorous debate, both inside and outside the Executive Branch, and I believe those debates reflect the strength of our democracy. I strongly believe that the Administration's detention policies must remain within the limits of the law. As noted, however, the Civil Rights Division's efforts are directed at domestic law enforcement, and I have no involvement in reviewing policies concerning the treatment and interrogation of detainees held outside the United States.

Civil Rights

8. In question 7.c., I asked how many investigations you have approved to examine potential problems of racial profiling. Your answer was not responsive. Please state the number of racial profiling investigations you have approved. If the answer is none, please state how many such investigations have been approved during the Bush Administration.

Answer: Since becoming Acting Assistant Attorney General, the Coordination and Review Section has initiated nine individual administrative investigations under Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Street Act. Those statutes apply to recipients of federal financial assistance from the Department of Justice. Four of the cases involve police departments, and the allegations include stopping an individual on the basis of his Iranian national origin, searching and coercing a confession from an African American, harassing an individual because he is Vietnamese, and failing to investigate a complaint from an African American. Also during this time, the Coordination and Review Section initiated five administrative investigations of departments of correction. Four involve allegations of failure to allow Native Americans to practice their religion (three in one department of corrections and one in a different state department of corrections). The fifth case involves an allegation of termination of a prison job and strip-searching an inmate because he is African American.

In addition, eighteen percent of the pattern-or-practice Special Litigation Section investigations I have approved since becoming Acting Assistant Attorney General have involved police departments (2 of 11). Half of these investigations involve allegations of racial profiling. Twenty-seven percent of the pattern-or-practice investigations involve adult prisons and jails; 27 percent involve juvenile detention facilities; and 27 percent involve facilities for persons with disabilities. I have also approved two Special Litigation investigations regarding enforcement of the Religious Land Use and Institutionalized Persons Act.

9. In question 11.b., I asked whether you have done anything to investigate serious allegations of impropriety in the review of Georgia's submission of its 2005 voter photo

ID law. I also asked whether you have done anything to ensure this kind of impropriety is not repeated in the future. You stated only that the matter is under investigation by the Office of Professional Responsibility and that you would take action if OPR ever issues recommendations on the matter. However, as the acting head of the Civil Rights Division, you have an independent obligation to ensure that the Division properly fulfills its duties under Section 5 of the Voting Rights Act, even if OPR does not complete its investigation before you leave office. Given your answer, is it fair to conclude that you do not plan to take any independent action to investigate the allegations of impropriety surrounding the review of Georgia's Section 5 submission, or to prevent such problems in the future – regardless of the time frame for OPR action?

Answer: Whether any further investigation and action is warranted will be determined after OPR and OIG issue their reports and any accompanying recommendations.

10. In question 12.a., I asked you whether “first line career professionals who examine the evidence [are] allowed to include in their memos to you their specific recommendations on whether to approve a voting change under Section 5 of the Voting Rights Act.” You said that you expect the memos you receive “to reflect the views of all staff who worked on the matter,” but did not answer the question affirmatively. Is your answer to question 12.a. yes or no?

Answer: As with all matters in the Civil Rights Division, recommendations are ultimately made to the Assistant Attorney General by the relevant Section Chief. As someone who has spent over a decade working as a career attorney in the Department of Justice and throughout all three branches of the federal government, I value the input of career employees. I expect the memos I receive to reflect the views of all staff who worked on the matter. If confirmed, I will continue to encourage all staff who work on a matter to participate fully in the deliberative process.

11. In question 12.b., I asked if you would inform all staff who review Section 5 submissions that they are permitted to submit a written recommendation to you about whether a particular submission should be pre-cleared. You stated that you will “encourage all staff who work on a matter to participate fully in the deliberative process.” Is your answer to question 12.b. yes or no?

Answer: See above response to question 10.

12. In questions 18a. and 18.b., I asked whether you are concerned about allegations of racial discrimination and poor morale in the Voting Section. You stated that you take such allegations seriously, and that based on your discussions with section management, you understand that morale in the Section 5 unit is “generally good.” Other than talking to managers, have you taken any action to investigate whether, as one former employee claimed, career staff in the Voting Section have been subjected to “disparate treatment based on race?” If so, what action have you taken?

Answer: I take allegations of race discrimination and poor morale very seriously. The Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. There

are well-established Equal Employment Opportunity complaint procedures in place at the Department of Justice to address allegations of race discrimination as I described in my previous answer. This process is open to all employees of the Department.

With respect to morale, I have taken a number of management actions to ensure that morale remains good in all the sections, including the Voting Section. I have worked to maintain an environment of open dialogue within the Civil Rights Division. In addition to regular meetings with the senior leadership of the sections, I have visited each section and met with attorneys on a more informal basis. The Attorney General has also personally visited many sections within the Division. In addition, other front office managers personally visit the sections bi-weekly, in addition to daily communications. At formal Department functions and at informal gatherings of section employees, I have emphasized the significance of our mission at the Civil Rights Division and shared my enthusiasm and appreciation for their hard work. I have supported the employees within the Division by working to ensure that the front office remains responsive to the needs of the sections. We continue to have in place an Ombudsman in the front office, and employees are always able to raise any issues of concern they may have with the Ombudsman or through their mentors or supervisors.

13. John Tanner, the former Chief of the Voting Section, recently departed after a very troubled tenure that spawned several ongoing OPR investigations, created significant morale problems, and produced serious allegations of politicized enforcement of our voting laws. It will be crucial to select a successor who is not in any way tainted by Mr. Tanner's tenure and is free of any past problems as a manager. Only a fresh start by a leader of the highest qualifications and integrity can restore the public's confidence in the vigor and impartiality of the Section's enforcement of the law.
 - a. Do you agree that it is important to select a new Section Chief for the Voting Section who was not associated with Mr. Tanner's leadership of the Section and will bring a fresh perspective?
 - b. Do you agree that in order to rebuild morale in the Voting Section it is essential to select a Section Chief who has impeccable credentials as a manager?
 - c. Do you agree that anyone selected to head the Voting Section must have a strong record of fairness that will inspire confidence in his or her ability to appropriately address any concerns about equal employment opportunity in the Section?

Answer (a – c): I have appointed a new career Section Chief. The new Section Chief has served in the Voting Section for twelve years. Prior to his service at the Department, he worked on voting rights issues in private practice. In addition, he has received recognition for his work on behalf of minority litigants in race discrimination cases, including the Georgia NAACP's prestigious "Thurgood Marshall Decade Award."

14. At the hearing on your nomination, I asked you what evidence led you to file a brief in Crawford v. Marion County Board of Electors. On May 12, 2008, the New York Times reported that "[F]rom October 2002 to September 2005, the Justice Department indicted

40 voters for registration fraud or illegal voting, 21 of whom were noncitizens” Do you know whether this statement accurate? Did you have any concrete evidence of in-person voter fraud at the time you filed your brief in the case? If so, please summarize that evidence.

Answer: The Civil Rights Division does not know whether the New York Times statement is accurate. The *Crawford* case affects the Department’s ability to enforce the Help America Vote Act, which requires voters to provide proof of identification (including, but not limited to, photo identification) before registering or casting their first ballot. *Amicus* briefs filed by certain Senators and Members of Congress specifically put the proper interpretation of HAVA and its effect on state laws before the Supreme Court. Justice Stevens’ lead opinion discussed HAVA as well as another federal statute that the Civil Rights Division enforces, the National Voter Registration Act of 1993 (NVRA). Justice Stevens’ opinion observed that “[b]oth [HAVA and the NVRA] contain provisions consistent with a State’s choice to use government-issued photo identification as a relevant source of information concerning a citizen’s eligibility to vote.” *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008) at *7. Concrete evidence of in-person voter fraud was not a prerequisite to filing a brief in this case.

Let me emphasize that the Civil Rights Division will investigate and take any appropriate enforcement action if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner.

15. Please provide:

- a. The number and dates of prosecutions, if any, brought by the Justice Department alleging in-person voter fraud at a polling place;
- b. the number of convictions, if any, involving in-person voter fraud at a polling place;
- c. the number of cases identified in response to question b. in which the in-person fraud was intentional rather than the result of a mistake; and
- d. the name and case numbers for any criminal cases identified in response to question b.

Answer: It is my understanding that the Criminal Division does not keep statistical information categorized in precisely the way that your question asks. It also is my understanding that the Criminal Division’s jurisdiction includes many varieties of offenses under the heading of voter fraud, including matters where the voter falsely registered but never voted, matters where the voter was not entitled to vote under applicable State laws (e.g., felons, non-citizens), matters where the voter registered and voted in more than one place, matters where the voter was misled into voting by misinformed election officials or registration agents, and matters where election officials themselves were complicit in the casting of fraudulent ballots at the polls (i.e., “ballot box stuffing” matters). The Criminal Division informs me that it is not aware of any individuals prosecuted federally since 2002 for “in-person voter fraud.” However, this does not mean that this sort of offense does not occur, nor does it indicate how prevalent it is. That is because “in-person at-the-polls voter impersonation” is very difficult to detect, particularly without a voter

identification requirement in place. In addition, I have learned from the Criminal Division that “in-person fraud” is not the sort of offense that reliably leads to criminal complaints to law enforcement authorities. Moreover, I understand that over the years the Criminal Division has attempted to weed out from prosecution individual transgressions where it thought the evidence demonstrated the prospective offender had, for whatever reason, a good faith belief that he or she was entitled to vote under the circumstances in question, and where prosecution would therefore be unjust.

16. Since your nomination hearing, there has been increasing public focus on the need for restoration of the Americans with Disabilities Act.

- a. Do you believe that people with disabilities currently have adequate protection under the Americans with Disabilities Act? Please explain.

Answer: The Americans with Disabilities Act (ADA) is a landmark law that protects the civil rights of the more than 50 million persons with disabilities and was intended to provide individuals “equality of opportunity, full participation, independent living, and economic self-sufficiency.”

The Civil Rights Division’s Disability Rights Section (DRS) protects the rights of persons with disabilities under Titles I, II, and III of the ADA. The ADA prohibits discrimination on the basis of disability in over seven million places of public accommodation, including all hotels, restaurants, retail stores, theaters, health care facilities, convention centers, parks, and places of recreation (Title III), in all activities of over 80,000 state and local governments (Title II), and in all employment practices of state and local government employers with 15 or more employees (Title I). The ADA also establishes architectural accessibility requirements for new construction and alterations of buildings and facilities covered under Title II and Title III, which generally include all nonresidential buildings and facilities.

DRS’s responsibilities under the ADA include:

- Litigation under Titles II and III of the Act;
- Litigation against public employers under Title I of the Act on referral from the Equal Employment Opportunity Commission or under the Attorney General's independent pattern or practice authority;
- Certification of state and local building codes for equivalency with the requirements of the ADA Standards for Accessible Design;
- Provision of information on ADA rights and responsibilities to businesses and governments covered by the ADA, persons with disabilities, and the general public; and coordination of public outreach activities with other Federal agencies with enforcement responsibilities under the ADA;

- Investigation of complaints within certain subject matter areas under Title II, including, for example, law enforcement, public safety, courts, and correctional institutions.
- Coordination of the administrative enforcement of Title II by the Department of Justice and seven other designated agencies; and
- Issuance of regulations necessary to implement Title II and Title III of the ADA, including the ADA Standards for Accessible Design.

In addition, under Executive Order 12250, DRS coordinates and ensures consistent and effective enforcement of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted and federally conducted programs and activities.

Compliance activities

DRS has pursued a comprehensive program of enforcement and public education under the ADA. By promoting voluntary compliance and through lawsuits and both formal and informal settlement agreements, the Division has achieved greater access for persons with disabilities nationwide in the public and private sectors. These efforts have resulted in the removal of architectural and communication barriers, and the elimination of discriminatory policies in a wide variety of settings, including hotels, restaurants, retail stores, sports arenas, child care centers, town halls, courts, and prisons. Since the January 2001 announcement of the President's New Freedom Initiative, DRS has achieved results for people with disabilities in over 2,000 actions under the ADA, including formal settlement agreements, informal resolution of complaints, successful mediations, consent decrees, and favorable court decisions. In Fiscal Year 2007 alone, the Division achieved favorable results for persons with disabilities in 309 cases and matters, which provided injunctive relief and compensatory damages for people with disabilities across the country and set major ADA precedents in a number of important areas.

Under DRS's Project Civic Access initiative, a wide-ranging program to ensure that state facilities, counties, cities, towns, and villages comply with the ADA, the Section has negotiated and entered 155 agreements with 144 communities to make public programs and facilities accessible, improving the lives of more than 3 million Americans with disabilities. Most notably, agreements with the City of New Orleans, Louisiana and Harrison County, Mississippi respond to the widespread flooding and damage in those areas following Hurricane Katrina. New Orleans will complete physical changes required in a pre-Katrina settlement agreement that had not yet been made. The Department will provide technical assistance and other professional services by architectural and design consultants to assist the City of New Orleans and Harrison County, in their efforts to rebuild and provide facilities that are accessible to persons with disabilities, including providing funding for design reviews of plans for new construction and modification to facilities. The agreements also require the development of new emergency management plans that include provisions for accommodating people with disabilities.

DRS has also produced seven chapters of The ADA Best Practices Tool Kit, which is designed to assist State and local officials in complying with title II of the ADA. Issued in installments on the Department's ADA Home Page at www.ada.gov, the Tool Kit guides State and local government officials in identifying and resolving problems that prevent people with disabilities from gaining equal access to State and local government programs, services, and activities. It also teaches State and local officials how to conduct surveys of their buildings and facilities to identify and remove architectural barriers to access. While State and local governments are not required to use the Tool Kit, the Department encourages its use as one effective means of complying with the requirements of the ADA. To date, chapters address ADA basics, ADA coordinator responsibilities, effective communication, 9-1-1 and emergency communications, website accessibility, curb ramps and pedestrian crossings, and emergency management and planning.

Two recent settlement agreements obtained by the Section illustrate some of its wide-ranging ADA enforcement efforts. On March 10, 2008, a federal court in Michigan entered a consent decree resolving a lawsuit that the Department of Justice and the Michigan Paralyzed Veterans of America filed against the University of Michigan. The lawsuit was brought to challenge the lack of accessible seating in the University's football stadium. Under the settlement, the University will add a minimum of 248 permanent wheelchair seats and 248 companion seats to the stadium during the next two years. The majority of these seats will be along the side lines. Currently, the stadium has 81 pairs of wheelchair and companion seats, all located in the end zones. By the 2010 football season, the University will have at least 329 pairs of wheelchair and companion seats dispersed throughout the stadium.

Additionally, the Department of Justice and the International Spy Museum recently reached a settlement agreement under the ADA. As a result of this precedent-setting agreement, which was announced on June 3, 2008, the museum agreed to work to bring the content of its exhibitions, public programs, and other offerings into full compliance with ADA requirements so that its exhibits are accessible and effectively communicated to individuals with disabilities, including individuals with hearing and vision impairments. By focusing on visitors who are blind or have low vision and who are deaf or hard of hearing, the agreement establishes a new level of access for cultural and informal educational settings. Of the 50 million Americans with disabilities, 16 million have sensory disabilities. The agreement seeks to ensure these individuals will have access to the museum's exhibitions, audiovisual presentations, and programs, as required by law.

Mediation

DRS's innovative ADA Mediation Program has become an important part of the ADA compliance program. Using more than 400 professional ADA trained mediators throughout the United States, the ADA Mediation Program continues to expand the reach of the ADA at minimal expense to the government. It allows the Section quickly to respond to and resolve ADA complaints effectively, efficiently, and voluntarily, resulting in the elimination of barriers for people with disabilities throughout the United States. Since its inception, 3,000 complaints filed with the Department alleging violation of Title II and Title III have been referred to the

program. 77% of complaints mediated have been successfully resolved. In FY 2007, this success rate was 84%, the highest yearly rate since the inception of the program.

Technical assistance

DRS engages in a wide range of technical assistance activities to educate the public about the ADA's requirements. The ADA Information Line (800-514-0301 (voice) and 800-514-0383 (TTY)) receives over 100,000 calls annually seeking information and publications on the ADA. In fiscal year 2007, the Section's popular ADA Website (www.ada.gov) served more than 3.6 million visitors who viewed the pages and images more than 56.9 million times, a 16% increase over the prior year.

DRS develops and disseminates basic question-and-answer booklets, detailed technical assistance manuals addressing all aspects of Titles II and III of the ADA, illustrated design guides and checklists addressing specific topics, a CD-ROM containing a complete set of ADA publications, an online course for small businesses, and a variety of videos available in DVD and VHS format as well as fully accessible streaming videos on the ADA Website. All publications are available in standard print and in alternate formats for people with disabilities; the basic publications are also available in Spanish and other languages for people with limited English proficiency. The Section participated in 71 speaking events, reaching approximately 4,500 people and sent staff to distribute information and answer questions to promote public awareness of the ADA at 11 national conferences, with a combined estimated audience of 250,000 people.

DRS is producing a fifteen-minute video addressing common misunderstandings small employers have about Title I of the ADA. The video will be similar in format to the Department's very successful "Ten Small Business Mistakes."

DRS operates the ADA Business Connection, a multifaceted program for small businesses, which includes conducting a series of meetings between disability and business communities around the country, producing a series of ADA Business Briefs on discrete topics of particular interest to small business, and an ADA Business Connection destination on the ADA website. In October 2007, the Section conducted the first *Accessible Neighborhoods: Information Exchange Meetings*, a new initiative under this program designed to reach into smaller, less urban areas. These meetings, which complement the ADA Business Connection Leadership meetings, help smaller communities across the country bring together local leaders to discuss issues of common concern and to plan a small-scale project that will improve neighborhood business accessibility immediately and cement a long-term cooperative relationship among the participants. Four are planned for FY 2008 (Pittsburg, KS; Birmingham, AL; Boulder, CO; Great Falls, MT).

Updating Architectural Standards

In addition to the Division's robust ADA enforcement efforts, the Department also recently announced that it is soliciting comment on proposed amendments to its regulations implementing Titles II and III of the ADA and holding a public hearing on July 15, 2008. The proposed regulations will, for the first time, establish specific requirements for the design of accessible public facilities such as courtrooms and an array of recreation facilities including playgrounds,

swimming pools, amusement parks, and golf courses, making it easier for individuals with disabilities to travel, enjoy sports and leisure activities, play, and otherwise participate in society.

The proposed amendments are intended to implement revised guidelines published by the Architectural and Transportation Barriers Compliance Board (Access Board) and to adopt changes necessary to address issues that have arisen since the publication of the original regulations in 1991. The amendments, which represent more than 10 years of collaborative efforts with disability groups, the design and construction industry, state and local government entities, and building code organizations, also are intended to provide greater consistency between the ADA Standards and other federal and state accessibility requirements.

In addition to the work of DRS, the Special Litigation Section protects the constitutional and federal statutory rights of persons confined in certain institutions owned or operated by, or on behalf of, state or local governments. These institutions include, *inter alia*, juvenile justice facilities, nursing homes, and facilities for individuals who are mentally ill and developmentally disabled. Where appropriate, the Section ensures that the individuals are afforded the protections of the ADA. Some of the work of the Special Litigation Section is discussed further in response to question 16(c).

The Housing and Civil Enforcement Section has also helped persons with disabilities. The Division's enforcement of the Fair Housing Act's protections against discrimination based on disability are a vital element of the President's New Freedom Initiative to provide and enhance community-based opportunities for individuals with disabilities. The Fair Housing Act requires that multi-family housing constructed after 1991 include certain features to make it usable by, and accessible to, persons with disabilities. Twice a year since 2005, we have held a Multi-Family Housing Access Forum, intended to assist developers, architects, and others understand the Act's accessibility requirements and to promote a dialogue between the developers of multi-family housing and persons with disabilities and their advocates. Our most recent Access Forum events were held in Miami in November 2007 and in Seattle in May 2008.

In addition to these proactive outreach efforts, the Division actively litigates cases involving housing that is not designed and constructed in accordance with the Fair Housing Act and the Americans with Disabilities Act. In January 2008, the Division settled a case alleging systemic violations of the Fair Housing Act's multi-family housing accessibility requirements for \$175,000 in monetary relief plus retrofitting of the inaccessible features. During fiscal year 2007, we filed six accessibility cases, settled seven such lawsuits, and obtained favorable summary judgment rulings in two accessibility cases. The Housing and Civil Enforcement Section also actively monitors compliance with the consent decrees in these cases. During calendar year 2007, we obtained relief in the amounts of \$700,000 and more than \$1 million, respectively, on behalf of victims in two disability discrimination cases. We also continue to monitor the creation of more than 14,500 new accessible housing opportunities in twenty-six States resulting from settlements entered since October 2004.

Moreover, the Division vigorously enforces the Fair Housing Act's requirement that local governments not discriminate against group homes for persons with disabilities. For example, in March 2008, the Division obtained favorable rulings on behalf of group homes for youth with

disabilities in the District of Columbia and group homes for persons in recovery from alcohol or drug addiction in Boca Raton, Florida. Last fall, working with private plaintiffs, we ended contentious litigation over Sarasota County, Florida's treatment of group homes for persons in recovery or with mental illness. The settlement allows the group homes to continue to operate and requires the county to pay \$760,000 in monetary relief – our largest monetary settlement ever in a group home case.

- b. Do you believe that the Act has been correctly interpreted by courts that have held that people with conditions such as epilepsy, diabetes, HIV, cancer, or mental retardation are not individuals with disabilities protected under that statute? Please explain.

Answer: I am aware that Congress currently is considering H.R. 3195, the ADA Restoration Act of 2007. The Act is intended, among other things, to address recent court decisions that some regard as narrowing the coverage of the ADA. A Statement of Administration Policy has recently been issued on H.R. 3195.

- c. Do you believe that the Civil Rights Division has undertaken sufficient efforts to enforce the Act's integration mandate and the Supreme Court's decision in *Olmstead v. L.C.*? Please explain and please describe those efforts.

Answer: Yes, the Civil Rights Division has undertaken significant efforts to enforce the ADA's integration mandate and the Supreme Court's decision in *Olmstead v. L.C.* For example, the Division's Special Litigation Section continues to evaluate residential placements in each of its investigations of health care facilities under the Civil Rights of Institutionalized Persons Act (CRIPA) in light of the ADA's requirement that services be provided to residents in the most integrated setting appropriate to their needs. Through its CRIPA work, the Division continues to seek to eliminate the unjustified institutional isolation of persons with disabilities. The Division recognizes that unnecessary institutionalization is discrimination that diminishes individuals' ability to lead full and independent lives.

Since this Administration implemented its New Freedom Initiative in January 2001, the Civil Rights Division has authorized 37 CRIPA investigations involving *Olmstead* issues. These investigations involve 15 nursing homes, 21 psychiatric hospitals, and 11 facilities for persons with developmental disabilities. By targeting *Olmstead* violations in its CRIPA program, the Civil Rights Division's CRIPA enforcement activities have enabled hundreds of unnecessarily institutionalized individuals to live safely in the community with adequate supports and services.

- d. Do you have any plans to expand the Division's *Olmstead* enforcement efforts? Please explain in detail the reasons for your response, and describe any changes you believe should be made.

Answer: The Civil Rights Division, through its CRIPA program, will continue to focus efforts on matters fundamental to persons with disabilities, including access to core activities of community living and *Olmstead* implementation.

Partisan Policies

17. You stated in response to question 19 that on March 31, 2008, you initiated a review of the Division's hiring policies that were in place prior to your tenure to determine whether any revisions are necessary and to determine whether a written policy would be helpful in clarifying the process of hiring unpaid interns. Please state who is responsible for this review, whether it has been completed, and if so, please describe in detail its findings and conclusions. If this review has not been completed, please state when you anticipate it will be completed.

Answer: I am responsible for this review with the assistance of career attorneys and anticipate that it will be completed soon.

18. In response to questions 22.a. and 22.b., you stated that you "do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division." Please explain in detail what you mean by this statement. Specifically, explain whether you have second-hand knowledge of such instances or whether you have first-hand knowledge of such instances occurring *prior* to the time you worked in the Division. Please also summarize the information you have given to OPR/IG.

- a. Did anyone employed in the Division tell you that ideology or partisan affiliation had played a role in personnel decisions for career Division employees at any time?
- b. Do you have any reason to believe that ideology or partisan affiliation had a role in personnel decisions for career Division employees?

Answer (a – b): I am aware of allegations regarding Bradley Schlozman, who no longer works at the Department and with whom I did not overlap for any substantial period of time. I have no personal knowledge of such instances, which are reported to have occurred prior to the time I joined the Division. I have responded to OPR/OIG's document request and was interviewed for less than one hour by OPR/OIG on this matter. I informed them that I was concerned about the allegations and that I appreciated that they were investigating the matter. I told them that I did not overlap with Mr. Schlozman for any substantial period of time and that I was aware of these allegations involving him. I told them about current hiring practices in the Division.

19. In question 27.c., I asked when you first learned that Mr. Schlozman had expressed a desire to replace some attorneys in the Appellate Section with "good Americans." You stated that you "first became aware that Mr. Schlozman was reported to have used that expression some time after he left the Civil Rights Division." Is it fair to read your answer as indicating that you learned about Mr. Schlozman's statement before it was reported in the *Washington Post* on June 21, 2007? If so, how did you learn of it, what specifically did you hear, and what, if anything, did you do in response?

Answer: I first learned about the Appellate Section transfers after it was reported in the press in June 2007.