

**Responses to Written Questions of
Senator Edward M. Kennedy to Grace Chung Becker,
Nominee to the Civil Rights Division**

1. Before you joined the Division two years ago, you had almost no experience in civil rights. Although you have impressive credentials, nothing in your background suggests the civil rights experience and dedication to civil rights that's important for anyone nominated to head the Division.

Questions:

- a. Do you agree that the head of the Civil Rights Division should have a strong commitment to civil rights? What in your record would demonstrate that kind of commitment?

Answer: I am firmly committed to vigorously enforcing the federal civil rights laws. For over two years, first as Deputy Assistant Attorney General and then as Acting Assistant Attorney General for the Civil Rights Division, I have become very familiar with the remarkable work this Division does on behalf of victims of discrimination. As a manager, I have worked closely with attorneys as they investigated matters, litigated cases, and negotiated agreements in the United States' enforcement of civil rights laws involving, among other things, law enforcement misconduct; hate crimes; human trafficking; educational opportunities; the civil rights of institutionalized persons in prisons, jails, nursing homes, mental hospitals, and facilities for the developmentally disabled; housing and employment discrimination; fair lending; voting rights; and disability rights. I have been supervising hundreds of civil rights matters involving numerous statutes during my tenure at the Division.

Moreover, throughout my legal career, I have demonstrated my commitment to helping vulnerable communities. For example, in 2000-2001, I received the Army's Outstanding Civilian Service Medal for my service as a Special Advisor to the Assistant Secretary of the Army (Manpower and Reserve Affairs) on No Gun Ri. In that matter, the Army Inspector General conducted a review of allegations that hundreds of South Korean civilians were massacred by American servicemembers underneath a railroad bridge in No Gun Ri, South Korea. I met survivors of the No Gun Ri incident and listened to their chilling description of an aerial attack and gunshots by American soldiers. Tragically, one woman described how she lost an eye during the incident and how she is reminded daily of the tragedy each time she cleans her glass eye. During the course of the investigation, I learned about many other horrific instances of untimely deaths, injuries, lost family members, and other significant hardships suffered by Korean-American citizens, American servicemembers, and my own family members who had lived through the Korean War.

While at the law firm of Williams and Connolly, I handled *pro bono* matters including, but not limited to, cases involving civil rights and domestic violence. From

approximately 2001-2005, I volunteered to serve on a local School Board's Human Rights Advisory Committee while I was continuing my work as a career government attorney and raising two young children. In my first year on that Committee, we addressed post-9/11 backlash issues. I served as the Executive Vice President and a Board member of the Korean-American Coalition (Washington, DC Area Chapter), a non-partisan, community group that *inter alia* conducted voter registration drives and citizenship drives.

- b. The Civil Rights Division is primarily a litigating division. Did you have any civil rights litigation experience before joining the Division?

What experience did you have in civil litigation before joining the Division?

Answer: For over two years, first as Deputy Assistant Attorney General and then as Acting Assistant Attorney General for the Civil Rights Division, I have become very familiar with the remarkable work this Division does on behalf of victims of discrimination. As a manager, I have worked closely with attorneys as they investigated matters, litigated cases, and negotiated agreements in the United States' enforcement of civil rights laws involving, among other things, law enforcement misconduct; hate crimes; human trafficking; educational opportunities; the civil rights of institutionalized persons in prisons, jails, nursing homes, mental hospitals, and facilities for the developmentally disabled; housing and employment discrimination; fair lending; voting rights; and disability rights. My strong working knowledge of the Civil Rights Division's role and responsibilities in federal law enforcement, as well as its day-to-day operations, has prepared me to handle litigation questions that may be presented to an Assistant Attorney General.

My litigation background has prepared me to bring a broader perspective to ongoing civil rights litigation that complements the subject matter expertise of many litigators within the Division. I have served as a career prosecutor in the United States Department of Justice in the Criminal Division and the United States Attorney's Office for the Eastern District of Virginia, and as a litigator at the law firm of Williams and Connolly, LLP. I have personally handled dockets of hundreds of cases, coordinated significant international narcotics investigations, litigated bench and jury trials, and handled federal appeals in the First, Fourth, Ninth, and District of Columbia Circuits.

While I served as a Deputy Assistant Attorney General from March 2006-December 2007, three of the four sections I supervised handled civil matters. Currently nine of the ten litigating sections that I supervise handle civil matters. I have supervised hundreds of civil cases involving numerous civil rights statutes. While clerking for a federal trial judge and a federal appellate judge, the majority of cases I handled involved civil litigation. Similarly, all of the litigation matters I handled while at the Department of Defense General Counsel's Office were civil matters. In addition, I handled civil matters while in private practice at Williams and Connolly.

- c. Who are some of the people who have inspired you to want to lead the Civil Rights Division? What civil rights leaders have influenced you? Who has inspired in you a commitment to work in the area of civil rights?

Answer: The Reverend Dr. Martin Luther King, Jr. inspires all of us who work in civil rights. There are many other civil rights leaders who also have influenced me. As a woman, I have sought inspiration from Rosa Parks, Harriet Tubman, and Susan B. Anthony.

Most significantly, my family has inspired me to work in the Civil Rights Division. Both of my parents immigrated to the United States from South Korea and are naturalized American citizens. English is their third language (after Korean and Japanese) because they grew up during the Japanese occupation of Korea and were required to speak Japanese in schools. My parents are pioneers of the Korean-American community in New York City. My parents came to the United States with little money. After several years, they took a financial risk and opened one of the first Korean businesses on West 32nd Street – a pharmacy that also sold cosmetics and gifts. That area of New York City is now known as “K-Town,” short for Korea Town. I spent many hours of my childhood working in the store, which catered primarily to Korean-American customers. Business was conducted in Korean. Even though they worked long hours, seven days a week, my parents were active in the Korean-American community. Their personal experiences, work ethic, and commitment to community service have inspired me to vigorously enforce the federal civil rights laws, so that we all can have an equal opportunity to achieve the American dream.

Two of my siblings learned English as a second language in the New York City public schools. Their experiences have inspired me during my supervision of the Educational Opportunities Section as it spearheaded its English Language Learners initiative. Since March 2006, the section has opened approximately 15 investigations to ensure that public schools are meeting their educational obligations for students with limited English proficiency.

- d. Other than the fact that it might provide a stepping stone to other opportunities, why do you want to lead the Civil Rights Division?

Answer: It would be a distinct privilege to serve my country as Assistant Attorney General for the Civil Rights Division, which continues to be at the forefront in protecting the civil rights of Americans as it has been for over fifty years. The work of the Civil Rights Division helps to ensure equal opportunities to achieve the American dream – whether it is owning a home, earning a fair wage, or casting a ballot. Although I have taken great pride in representing the United States as a government attorney for approximately thirteen years, no job has been more rewarding than working in the Civil Rights Division. It is tremendously gratifying to help vulnerable victims of discrimination. As set forth in response to Question 1.c., much of my inspiration to lead the Division comes from my family. I hope that my efforts can make this country a better place for my 10-year-old daughter and my 7-year-old son.

2. You spent a year as an advisor to William Haynes, the former General Counsel to the Department of Defense. Your questionnaire notes that you "coordinated input within the General Counsel's office and among Judge Advocates General of the various military services and other components on legislation or congressional questions for the record."

Questions:

- a. Did any of the matters you worked on for Mr. Haynes involve the use of torture or other harsh techniques in interrogation of detainees?

Answer: 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.

- b. What were the subjects of the legislation and Congressional questions you worked on as an advisor to Mr. Haynes? Did any of the Congressional questions relate to his nomination to the Fourth Circuit?

Answer: While working in the Legal Counsel section of the Department of Defense (DoD) General Counsel's Office, my responsibilities covered a wide variety of matters, including advising DoD components on the Freedom of Information Act, the Federal Advisory Committee Act, copyright infringement, and summer intern recruiting. I also coordinated input among various DoD offices (including Judge Advocates General) on the McCain Amendment. I helped prepare two DoD witnesses to testify before Congress concerning military commissions and Combatant Status Review Tribunals and coordinated responses to written Congressional questions after the hearing. I also 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.

3. Civil rights enforcement has clearly declined during this Administration. Members of Congress and civil rights advocates have repeatedly pointed out that the Division has been doing too little to protect civil rights. We need to know that if confirmed, things will be different on your watch.

Questions:

- a. Have you set specific enforcement priorities for each Section in the Division? If so, what are they?
- b. Please explain in detail what you see as the Division's most important priorities and why.

Answer (a - b): All of the work of the Division is vitally important. In addition to the existing priorities and initiatives, one priority I see in the remaining nine months of the

Administration is to vigorously enforce the voting rights laws in this Presidential election year.

4. Predatory subprime lending practices that disproportionately target minority borrowers had become an epidemic in our economy. These shameful practices have harmed all Americans, but they've hit minorities particularly hard. Nation-wide, these high-cost subprime loans account for more than half, of all loans to African-Americans.

Last year, a study found that 55 percent of African American and Latino borrowers in metropolitan Boston who obtained loans for single-family homes had subprime loans, compared with just 13 percent of white borrowers. The New York Times has reported that among Americans earning \$125,000 to \$150,000 in New York, 52 percent of Hispanics and 63 percent of African Americans had subprime loans, compared with 24 percent of non-Hispanic white borrowers with the same income. These practices have shaken our economic well-being and demand swift action by every government agency involved. Many struggling families will lose their homes. The Division has authority to enforce the Fair Housing Act and Equal Credit Opportunity Act, which have broad prohibitions against racial discrimination in mortgage lending.

Questions:

- a. What has the Housing Section done under your leadership to address predatory mortgage lending based on race?

Answer: Under my leadership, the Housing and Civil Enforcement Section (HCE) has obtained approximately \$4.7 million of monetary relief on behalf of African-American and Hispanic borrowers in fair lending cases. The Civil Rights Division's fair lending enforcement focuses on the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA), which prohibit race-based lending discrimination. The Housing and Civil Enforcement Section, which is the Division component responsible for enforcing the FHA and ECOA, brings cases involving redlining, where prime lenders refuse to serve majority-minority neighborhoods, and pricing discrimination, where minorities are charged a higher interest rate than non-minorities. Redlining and pricing discrimination leave minorities more vulnerable to unscrupulous lenders. Thus, the Section's redlining and pricing discrimination cases complement the efforts of other federal and state agencies to combat predatory lending generally.

Since I began overseeing HCE in March 2006, the Section has filed suit against Centier Bank, one of the largest residential and small business lenders in the Gary, Indiana, area, alleging that the Bank systematically avoided serving the lending and credit needs of predominantly African-American and Hispanic neighborhoods. On the same day that the complaint was filed, a consent decree was lodged requiring the Bank to:

- Invest a minimum of \$3.5 million in special financing program for residential and Community Reinvestment Act 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 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 and provide full lending services at a branch in a majority Hispanic neighborhood;
- 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 FHA and ECOA; and
- Keep records and provide reports to the United States, as well as other remedial relief.

Under my leadership, the Section also filed suit against two Philadelphia-area automobile dealerships, Pacifico Ford, Inc., and Springfield Ford, Inc., alleging that they systematically charged higher "markups" on car loan interest rates to African-American customers than to similarly-situated white customers. These cases were resolved through consent decrees under which Pacifico Ford agreed to pay up to \$363,166, plus interest, and Springfield Ford agreed to pay up to \$94,565, plus interest, to African-American customers who were charged higher markups. In addition, both dealerships agreed to change the way they set markups to prevent discrimination.

In addition, the Section continues to monitor compliance with consent decrees entered before March 2006. For example, in July 2004, the Section reached a settlement agreement resolving a redlining complaint against First American Bank, a major residential and small business lender in the Chicago area. The agreement requires the Bank to open four new branches in areas affected by its allegedly discriminatory conduct and to invest \$5 million in a special financing program for predominantly minority neighborhoods.

Currently, the Section also is engaged in pre-suit negotiations with a lender that we believe has engaged in discrimination against African Americans by charging them higher interest rates than whites for loans on manufactured homes and is investigating a number of allegations of redlining and pricing discrimination involving both prime and subprime loans. Section representatives also participate in interagency working groups focused on fair lending, including the Inter-Agency Fair Lending Task Force, with the Department of Housing and Urban Development (HUD), the Federal Trade Commission (FTC), and the bank regulatory agencies, which meets regularly to coordinate its law enforcement efforts – including issues related to predatory lending.

- b. I'm concerned that investigations may be delayed too long in the Department before a case is filed. Last July you testified in the House of Representatives that the Division had received referrals from the FDIC and the Federal

Reserve Board of possible lending discrimination in the fall of 2006. Have you filed any cases based on those referrals?

Answer: In the fall of 2006, the Housing and Civil Enforcement Section received three referrals of possible race or national origin discrimination in lending from the Federal Reserve Board and the FDIC. One referral has resulted in an authorized lawsuit that currently is in pre-suit negotiations (see answer to Question 4.a. above). The other two referrals remain under review and consideration.

- c. How many pattern or practice cases are you currently pursuing in the area of lending discrimination?

Answer: The Division currently has 34 pending fair lending matters, including matters in which we are monitoring compliance with previously lodged consent decrees. Lending discrimination cases are rarely contested in court; rather, the vast majority are settled through consent decrees filed contemporaneously with a complaint.

- d. If you are confirmed, how do you plan to address the serious problem of mortgage discrimination based on race and national origin?

Answer: I am committed to vigorous enforcement of the fair lending laws, and if confirmed, I will ensure that the Division continues to work with the Department of Housing and Urban Development, the Federal Trade Commission, and the bank regulatory agencies in a coordinated fashion in our law enforcement efforts.

5. There has been a steep decline in the number of cases brought on behalf of minorities. The Division has filed almost as many cases alleging discrimination against whites as against African Americans and Latinos combined. It's brought only six cases alleging discrimination against African Americans or Latinos. Yet the Division has filed five cases of discrimination on behalf of whites. No one should be the victim of discrimination, regardless of what race they are. But the Division's focus should also reflect the reality of where the greatest problems occur. Charges filed by African Americans make up by far the largest percentage of discrimination complaints referred to the Division by the Equal Employment Opportunity Commission.

Questions:

- a. How do you account for the Division's failure to protect the rights of African Americans and Latinos?
- b. Do you agree that combating discrimination against African American and Latino workers should be a high priority for the Division? If you are confirmed, will you ensure that the Division's enforcement efforts target the most significant civil rights problems?

Answer (a – b): I am committed to enforcing the federal civil rights laws on behalf of all Americans. Under my supervision, the Division has brought cases on behalf of African Americans, Hispanics, and many other protected classes. For example, in 2007, the Division obtained a \$725,000 settlement against the owners and operators of a Michigan apartment complex who engaged in a pattern or practice of discrimination against African Americans seeking to rent apartments at the complex. The same year, we obtained judgments against a couple who owned single-family homes in the Austin and San Antonio, Texas, areas. They misled Hispanics who had limited ability to speak and read English into believing that they were purchasing properties offered for sale by the defendants when in fact they were entering only into lease agreements. The couple then defaulted on the mortgages and exposed these individuals to foreclosure. During this Administration, over 75% of our fair lending cases have involved race and national origin discrimination, and we have obtained over \$23 million in monetary relief on behalf of minority victims in mortgage redlining cases alone.

I am also deeply committed to the vigorous enforcement of our nation's criminal civil rights laws and will continue to aggressively prosecute those within our society who attack others because of the victims' race, color, national origin, or religious beliefs. On March 11, 2008, for example, the Department obtained a conviction against an Indiana man who burned a cross outside the home of a bi-racial family in an attempt to drive them from their neighborhood.

Under my supervision, the Department has successfully prosecuted a number of high profile hate crime cases. In *United States v. Walker*, three members of the National Alliance, a notorious white supremacist organization, were convicted of assaulting a Mexican-American man in Salt Lake City, Utah. These same defendants allegedly assaulted an individual of Native-American heritage outside another bar in Salt Lake City. In *United States v. Fredericy and Kuzlik*, two men in Cleveland, Ohio, were convicted for their role in pouring mercury, a highly toxic substance, on the front porch and driveway of a bi-racial family with the intent to force the victims out of their home. In *United States v. Saldana*, members of a violent Latino street gang in Los Angeles were convicted of murdering an African-American man because he was using a public street claimed by the gang.

The Department continues to vigorously prosecute federal hate crimes across the country. For example, on March 20, 2008, the Department obtained indictments against two men in Illinois for vandalizing an African-American couple's home with racist graffiti. Additionally, in a particularly egregious case, the Department is prosecuting defendants in Kansas City, Missouri, for shooting and killing an African American. Both cases currently are pending trial.

If confirmed, I will bring any case where the provable facts constitute a violation of the law.

6. In *Ledbetter v. Goodyear Tire & Rubber Co.*, the Supreme Court held that victims of pay discrimination must file a charge of discrimination within 180 days of an

employer's initial decision to discriminate, rather than within 180 days of workers' most recent discriminatory paycheck. That decision overturned a legal interpretation accepted by nine federal courts of appeals.

Questions:

- a. As Justice Ginsberg pointed out, the decision overlooks the fact that it often takes longer for workers to discover pay discrimination, because employers often keep salaries secret. Do you agree that the *Ledbetter* decision is unfair to victims of pay discrimination in the workplace, who may not realize at first that they're being discriminated against?

Answer: I will follow the law as set forth in the Supreme Court's opinion in this case. Although I did not oversee the Employment Litigation Section or Appellate Section at the time the United States determined its position in this case, it is my understanding that 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 Supreme Court ultimately agreed with this position, ruling that the limitations period for a Title VII disparate-pay claim does not begin anew with the issuance of each paycheck that allegedly represents the lingering effects of time-barred discriminatory acts. I am committed to enforcing all of the statutes within the purview of the Division's Employment Litigation Section, including Title VII, vigorously on behalf of all Americans and consistent with the guidance provided by the Supreme Court.

- b. The *Ledbetter* decision provoked strong criticism because it so clearly conflicts with the purpose of combating job discrimination. A bill to overturn the decision has passed the House and is pending in the Senate. Would you support legislation making clear that pay discrimination occurs each time an employee receives a discriminatory paycheck?

Answer: The Administration has already established its policy position on this issue. On July 27, 2007, the Administration issued a Statement of Administration Policy on H.R. 2831 – the Lilly Ledbetter Fair Pay Act of 2007.

7. The Division has an important role in prosecuting police misconduct, including excessive force and racial profiling. The federal role in protecting citizens against police misconduct is particularly important, because it's very difficult for citizens to protect themselves when law enforcement officers abuse their power. In recent years, the Division has failed to use its broad authority effectively, especially to halt system-wide patterns of police misconduct such as disparate law enforcement based on race. The failure to investigate the racially-charged prosecution of African American high school students in Jena, Louisiana is a recent example.

Racial profiling is still a reality for many minorities, especially African Americans, Latinos, and Asian Americans. Yet it appears from the Division's website that it has not filed a single racial profiling case during this Administration.

Questions:

- a. Has the Division filed racial profiling cases that are not shown on the Division's website?

Answer: The Civil Rights Division's Special Litigation Section investigates patterns or practices of violations of federally protected rights by law enforcement agencies under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. See 42 U.S.C. § 14141. In addition, the Special Litigation Section is authorized to examine allegations that a police department discriminates on the basis of race in its treatment of civilians under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c), which prohibits patterns or practices of discrimination by law enforcement agencies that receive Federal financial assistance.

The Department's enforcement efforts have included court orders and settlement agreements that prohibit racial profiling and require the collection of statistical data. For example, in *United States v. New Jersey*, the governing consent decree requires New Jersey to take various measures to ensure that officers of the New Jersey State Police do not engage in racial profiling. Statistical data regarding stops conducted by New Jersey State Police are reported by the Independent Monitoring Team in semiannual reports publicly filed with the court. Copies of the reports, which include statistical data, are available at: <http://www.nj.gov/lps/decreehome.htm>. In *United States v. Los Angeles*, the governing consent decree requires the Los Angeles Police Department to collect statistical data regarding traffic stops. Reports from the Independent Monitor and statistical data compiled by the LAPD can be found at: http://www.lapdonline.org/consent_decree. In addition, the Department recently concluded a Memorandum of Agreement with the City of Villa Rica, Georgia, which required the City's police department to take specific actions to ensure that police officers did not engage in racial profiling, including requirements that the police department collect and analyze data regarding traffic stops.

- b. Do you believe that combating racial profiling is an important part of the Division's civil rights enforcement responsibility?

Answer: Yes. I agree with the President that "racial profiling is wrong."

- c. How many investigations have you approved to examine potential problems of racial profiling?

Answer: The Division has taken a multi-faceted approach to combating racial profiling. In addition to ongoing pattern or practice investigations of racial profiling, the Civil

Rights Division provides education, training, and technical assistance to various federal law enforcement agencies on the "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," which was prepared by the Civil Rights Division in 2003 pursuant to a February 27, 2001, Presidential Directive. The Guidance was distributed to the heads of all executive branch agencies and all federal law enforcement agencies. The Division has been coordinating with the FBI, DEA, and other federal law enforcement agencies on their racial profiling training. It is my understanding that the 2003 Guidance is distributed at federal law enforcement trainings and that new law enforcement officers are tested upon its principles. In addition, the Civil Rights Division has incorporated the 2003 Guidance into its regular civil rights training courses at the National Advocacy Center. The Division also coordinates with the Community Relations Service, which provides racial profiling training to police departments around the country. Moreover, as part of our post-9/11 backlash initiative, we convene regularly scheduled interagency meetings with the Muslim, Arab, Sikh, and South Asian communities to facilitate the discussion of civil rights issues, including racial profiling concerns, between community groups and federal agencies.

8. The Supreme Court held last Term that Seattle and Louisville violated the Constitution by taking race into account in trying to maintain desegregated school systems. A majority of the Court recognized though, that we still have a compelling obligation to desegregate the nation's schools. The Court's decision means that we have to find a better way to do it that meets the constitutional requirements.

Questions:

- a. You supervised the Education Section as a Deputy Assistant Attorney General, and, you now supervise it as acting Assistant Attorney General. What has the Education Section done under your leadership to further desegregation of our schools?

Answer: The Educational Opportunities Section of the Civil Rights Division (EOS) actively enforces federal statutes that prohibit discrimination in public elementary and secondary schools and public colleges and universities. The laws enforced by EOS include Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. EOS also initiates enforcement activities upon receiving a referral from other agencies to enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act. EOS may intervene in private lawsuits which allege violations of the Equal Protection Clause or the education-related anti-discrimination statutes referred to above.

Under my leadership, EOS has continued 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. To ensure that districts comply with their obligations, EOS actively reviews these desegregation cases where the United States is a party 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.

Since March 2006, in the elementary and secondary school desegregation context, the Section has opened approximately 110 investigations. These new investigations include about 35 concerning specific allegations of segregation.

Additionally, since March 2006, EOS has obtained litigated relief, entered into court-approved consent decrees, or entered into out-of-court settlements in more than 35 instances. The relief includes eliminating one-race classrooms and schools, ensuring non-discriminatory hiring, promotion and assignment of faculty and administrators, improving facilities at one-race minority schools, and eliminating racially separate class superlatives and honors. For instance, during my tenure, in *United States v. Calhoun County School District* (SC), the court entered a negotiated consent decree that will reduce racial disparities among the schools. Currently, the district has two schools serving grades PK-5 and one serving grades 6-8. The decree provides for construction of a new school serving grades PK-8 that will replace two majority black schools in poor condition and make the facilities at the new majority black school equitable with those at the current majority white school. Furthermore, the majority white PK-5 will become a PK-8, and new attendance zone lines will reduce the current significant racial disparities of the existing schools. Similarly, in *United States v. Coweta County School Board* (GA), the court entered a negotiated consent decree, which addressed student attendance and assignment, facilities, employee assignment, and transfers.

EOS has also obtained substantial relief in other matters since March 2006. For instance, in the English Language Learner (ELL) context, EOS opened approximately 15 investigations into matters involving failures to do the following: identify students needing ELL services; provide adequate instruction, qualified teachers, and suitable facilities; appropriately test and exit students from ELL programs into mainstream programs; and conduct post-exit monitoring and academic support. EOS also obtained litigated relief, entered into court-approved consent decrees, or entered into out-of-court settlements in 5 cases concerning ELL students, including a court-ordered consent decree in the third largest public school system in the country, Chicago. Moreover, EOS opened approximately 45 investigations into complaints alleging discrimination on the basis of religion in, among other areas, free exercise, religious dress, access to facilities, and harassment.

In sum, EOS continues its important work of ensuring that equal educational opportunities are available on a non-discriminatory basis. EOS remains active in pursuit of this mission and continues to pursue desegregation as a goal.

b. If you're confirmed, how will you pursue that essential goal?

Answer: If confirmed, I will continue to vigorously enforce all the statutes within the purview of EOS. In particular, I will continue to ensure that EOS actively reviews

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.

9. This Administration's record on voting rights has been unacceptable. It's clear that many decisions on voting rights issues have been driven by politics. In 2002, the administration unnecessarily delayed approval of a Mississippi redistricting plan under the Voting Rights Act, allowing a federal court to impose a different plan favored by Republicans. In 2003, when former Majority Leader Tom Delay engineered a redistricting of Texas to try to deliver the House of Representatives to Republicans, the Division promptly pre-cleared it, ignoring the unanimous view of its career attorneys that the redistricting plan discriminated against minorities. The Supreme Court recently ruled that the plan violated the voting rights of Latino citizens.

When Georgia passed a photo identification requirement for voting, the Division promptly pre-cleared the change, overruling the advice of career staff that the law would disenfranchise minority voters. The district court and even the conservative Eleventh Circuit called the Georgia law a 21st century poll tax and halted its enforcement. The Division also filed amicus briefs in the key battleground states of Florida, Michigan, and Ohio in 2004, seeking to prevent voters from asking a court to have their provisional ballots counted in the Presidential election.

At the same time, during this Administration, the Division failed to vigorously enforce laws protecting the right to vote. The Bush Civil Rights Division has developed and filed only two cases to protect African Americans against racial discrimination in voting since it took office.

Questions:

- a. One of the first actions you took as acting head of the Division was to file a brief urging the Supreme Court to uphold a strict Indiana photo id requirement for voting, which had the potential to disenfranchise large numbers of minority voters. A broad coalition of civil rights advocates expressed deep concern that the Indiana law undermines voting rights. The law is also widely viewed as benefitting Republicans, raising the appearance that the Division's support of the law is politically motivated. At your hearing, I asked why you thought it necessary to file a brief supporting the Indiana photo ID law, given the potential harm to minority voters and the fact that Indiana was well-represented by competent counsel. You said then that you could not answer my question because the Department had filed a brief in the case. I am aware of no basis of privilege that would apply to Congress to prevent you from providing basic facts about a case in which you've filed a public brief. Please provide a response to this question, or explain in detail the legal basis for any privilege you believe prevents your responding.

Answer: I appreciate the opportunity to supplement the oral response I provided at the hearing. The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion, written by Justice Stevens, determined that Indiana's interests in furthering election modernization, preventing voter fraud, and safeguarding voter confidence justified the burdens imposed on the right to vote. As stated in that opinion: "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Id.* at *8. The concurring opinion stated: "The Indiana photo-identification law is a generally applicable, nondiscriminatory voting regulation[.]" *Id.* at *13 (Scalia, J., concurring). "The universally applicable requirements of Indiana's voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not even represent a significant increase over the usual burdens of voting. And the State's interests are sufficient to sustain that minimal burden." *Id.* at *15 (internal citations and quotation marks omitted).

At the hearing, I indicated that this case could affect 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. *Crawford* concerns a facial challenge to a state law that requires those who vote in person in federal elections to present a government-issued photo identification and, more generally, the appropriate constitutional standard for reviewing such a law. Congress has enacted numerous requirements, including registration and identification requirements, designed to "increase the number of eligible citizens who register to vote" while simultaneously "protect[ing] the integrity of the electoral process." 42 U.S.C. 1973gg(b)(1), (3). In 2002, Congress enacted the Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (42 U.S.C. 15301 *et seq.*), to establish and modernize various minimum election administration standards for federal elections. Among other things, HAVA requires voters to provide proof of identification before registering or casting their first ballot, see 42 U.S.C. 15483(a)(5)(A), (b)(2)(A), (3)(A). The Attorney General is responsible for enforcing those provisions, 42 U.S.C. 1973gg-9, 15511, and *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. The Attorney General also has authority to prosecute voter fraud in federal elections. See, e.g., 42 U.S.C. 1973i(c), (e), 1973gg-10. Voter fraud itself dilutes the right to vote. See *Purcell v. Gonzalez*, 127 S. Ct. 5, 7 (2006). Legitimate efforts to detect or deter voter fraud therefore promote the right to vote and protect the integrity of the process. As stated in Justice Stevens' lead opinion in *Crawford*, the "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." 2008 WL 1848103, at *9 (quoting Commission on Federal Election Reform, Report, Building Confidence in U.S. Elections § 2.5 (Sept. 2005), App. 136-137). The lead opinion discussed HAVA as well as another federal statute that the Civil Rights Division enforces, the National Voter Registration Act of 1993 (NVRA). It found 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." *Id.* at *7.

The Department's *amicus* brief discusses the context in which Indiana enacted its voter identification law. As more fully set forth in that *amicus* brief:

Indiana determined that it faced a serious problem of actual and potential election fraud. In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting of ballots by nonresidents. *Pabey v. Pastrick*, 816 N.E.2d 1138, 1145, 1153. The Indiana Supreme Court found that the widespread fraud had rendered the election results "inherently deceptive and unreliable." *Id.* at 1151.

At the same time, the State discovered that its voter registration rolls were highly inflated, thus creating a risk of further voter fraud. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. J.A. 312-313.

Shortly thereafter, Indiana responded to those and other concerns by enacting a number of election reforms. In particular, Indiana enacted Senate Enrolled Act No. 483 (Voter ID Law), Pub. L. No. 109-2005, which, in order to deter voter fraud, requires those who vote in-person to present photo identification, issued either by the United States or the State of Indiana. See Ind. Code 3-11-8-25.1(c) and 3-5-2-40.5; Pet. App. 106. On the same day, the legislature also placed new restrictions on absentee voting and how absentee ballots are handled, prohibiting the practice of pre-printing the absentee ballot application with certain information, such as the address (if different from the applicant's), party affiliation, or reason for voting absentee. Ind. Pub. L. No. 103-2005 § 4; Ind. Code 3-11-4-2(c), (d).

Brief for the United States as Amicus Curiae Supporting Respondents at 3-4, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita*, No. 07-25 (U.S. Dec. 10, 2007).

In addition, the facial nature of the challenge in *Crawford* is itself significant. As the lower courts stressed, the plaintiffs in *Crawford* failed to "introduce[] evidence of a single, individual Indiana resident who will be unable to vote as a result of [the Voter ID law,] or who will have his or her right to vote unduly burdened by its requirements." *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, as stated in the Department's brief, "[f]or the 99% of voters in Indiana who already have a photo ID, the law requires no more than that the voter present the ID at the polls. For the less than 1% of Indiana voters who do not yet have an ID, the State offers

them such an ID free of charge. And for those who are most likely to find it difficult to obtain even a free ID, state law provides alternative methods of voting that do not require presenting identification.” Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita*, No. 07-25 (U.S. Dec. 10, 2007). If the mere possibility that some unspecified voter may not possess the requisite form of identification were enough to invalidate a statute on its face, then it would obviously be more difficult to defend HAVA. It may be that certain Indiana voters could establish that they are nevertheless in fact burdened by the Indiana law. As the Department made clear in its brief, any such individuals could bring an as-applied challenge to the law in such circumstances. *Id.* at 11. Nothing in the Department’s position in *Crawford* would preclude the law from being declared unconstitutional on an as-applied basis in a concrete setting where the requisite elements of the constitutional claim are met.

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the Department’s longstanding practice for determining whether to file an *amicus* brief in a case. Given our country’s history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of the United States’ position in *Crawford*, 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.

Your question also mentions the Civil Rights Division’s enforcement of voting laws on behalf of African Americans during this Administration. During the time in which I have been overseeing the Voting Section, I have authorized a Section 2 lawsuit on behalf of African Americans in Georgetown County, South Carolina, that has already been filed and successfully resolved. I also authorized a Section 2 lawsuit on behalf of Hispanic voters. Additionally, it is my understanding that before I started overseeing the Voting Section in December 2007, the Voting Section filed four cases and successfully litigated a fifth, in addition to interposing thirty-six Section 5 objections, on behalf of African-American voters in various jurisdictions during this Administration. The cases filed include *United States v. Crockett County* (W.D. Tenn.); *United States v. Euclid* (N.D. Ohio); *United States v. Miami-Dade County* (S.D. Fla.); and *United States v. North Harris Montgomery Community College District* (S.D. Tex.), which also involved protecting the rights of Hispanic citizens. In addition, the Department successfully litigated *United States v. Charleston County, South Carolina* (D.S.C.) and successfully defended that case through appeal to the U.S. Supreme Court.

- b. You stated in discussing the Indiana photo ID issue that you could not discuss “predeliberative recommendations” when asked whether career staff had recommended the position you took in the brief in that case. Yet, you were quite willing to say that nobody from the White House or political appointee inside the Department of Justice had sought to influence your position. Why can you discuss the predeliberative positions of White House officials and

political appointees in the Department of Justice but not career attorneys? Congress has a strong interest in knowing whether the political leadership of the Division is listening to the career attorneys in the Division, following their refusal to follow the advice of career attorneys in the Georgia photo ID preclearance matter.

Answer: Thank you for the opportunity to clarify my answer. My answer at the hearing meant that I had no discussions with the White House or others outside the Justice Department about what the Department's position should be in this case. My testimony did not discuss any predecisional positions or relate the substance of any internal deliberation.

- c. Did the Appellate Section of the Civil Rights Division recommend that the Department file an amicus brief in the Indiana photo ID case? If so, did it recommend that the Department support the law?

Answer: The Department has a longstanding process in place for determining what position, if any, it will take in all cases pending before the Supreme Court of the United States. That process includes review by all interested components of the Department.

The Department of Justice has had a strong institutional interest, in both Democratic and Republican Administrations, in protecting the confidentiality of internal deliberations, in order to avoid chilling the robust debate and free flow of advice from the Department's career attorneys involved in the decision making process.

- d. During your hearing, you said repeatedly that you would not answer questions about the Indiana case until after the Supreme Court had issued an opinion. Please explain the legal basis for your belief that the Court's decision would affect any claim of privilege you believe prevents your responding to Congress on these basic issues.

Answer: See response to Question 9.a.

10. The historic mission of the Civil Rights Division has been to ensure that no one is denied access to the ballot because of race, color, national origin or language. Combating fraud was not part of that mission. In fact, the Department of Justice has always been extremely careful to keep fraud prosecutions in the Criminal Division. Many minority communities distrust prosecutors, in part because of racial profiling in some parts of the country. If voters believe the Civil Rights Division's role is to prosecute individual voters, the Division could not obtain the cooperation of minority communities needed to enforce voting rights. Minority voters must be able to look to the Civil Rights Division to protect their right to vote, without worrying the Division will suppress their vote by pursuing fraud allegations. This distinction has deep roots in the abuse of fraud statutes and other criminal statutes to intimidate minority voters. Yet, the Indiana brief is all about preventing fraud.

Questions:

- a. As head of the Civil Rights Division, why would you sign that brief? What message does it send to minority voters who have traditionally looked to the Civil Rights Division to protect their right to vote?

Answer: See response to Question 9.a.

11. Dr. Toby Moore, one of the career professionals who recommended that the Division object to the Georgia voter photo ID law, testified before the House Judiciary Committee that he filed a complaint with the Office of Professional Responsibility in the fall of 2005, alleging improprieties in the Division's review of that matter. In particular, he has alleged that the former Chief of the Voting Section, John Tanner, manipulated the staff's official memorandum concerning the evidence that the Georgia photo ID law was discriminatory.

Questions:

- a. Has the Office of Professional Responsibility finished its investigation of this complaint, and will you share its findings with this Committee?

Answer: This matter remains under investigation by the Office of Professional Responsibility (OPR). It is my understanding that it is the decision of that office whether to release the findings to this Committee.

- b. Presumably this should be of great concern to you, since it's been alleged that one of your top supervisors cooked the books on a voting rights issue that's received intense attention from Congress and the media. Since you became acting head of the Division, have you done anything at all to investigate the very serious allegations of impropriety concerning the Georgia photo ID requirement, or to ensure that this doesn't happen in the future?

Answer: This matter remains under investigation by OPR. The Georgia identification law was precleared before I came to the Civil Rights Division, and I was not involved in the decision in any way. If OPR's report of its investigation includes recommendations, I will ensure to the full extent of my authority that appropriate actions are taken.

12. According to a December 10, 2005 article in the Washington Post, during this Administration, the Division adopted a policy that career staff who review proposed voting changes submitted under Section 5 of the Voting Rights Act may not include written objections in the official memoranda forwarded to the Assistant Attorney General for approval.

Questions:

- a. Are the first line career professionals who examine the evidence 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?

Answer: As someone who has worked as a career attorney for over a decade, I place a high value on the input and advice of my career colleagues at the Civil Rights Division. The Division has some of the most experienced career civil rights attorneys in the country, and I take their recommendations very seriously. I expect the memos I receive to reflect the views of all staff who worked on the matter. My management style is one of collaboration and open communication, and if confirmed, I will continue to ensure that the recommendations of all staff are given the consideration they deserve.

- b. If confirmed, will you ensure that all staff who review Section 5 submissions are informed that they are permitted to submit a written recommendation about whether the submission should be pre-cleared? If not, please explain in detail why not.

Answer: If confirmed, I will continue to encourage all staff who work on a matter to participate fully in the deliberative process.

13. The current backlog in the Administration's processing of naturalization applications is about to deny thousands of people the opportunity to vote in November. The backlog at Immigration is nearly 1 million, and the FBI has a backlog of over 300,000 awaiting security clearance. As a result, thousands of hard-working people will be disenfranchised. Will you personally reach out to those agencies and express to them that this is an urgent civil rights issue?

Answer: The current backlog of naturalization applications is of concern to me. Both of my parents, all three of my siblings, and several of my cousins are naturalized American citizens. Based upon their experiences, I can appreciate the challenges associated with becoming a naturalized American citizen. As Acting Assistant Attorney General for the Civil Rights Division, I chair a bi-monthly meeting with representatives of the Muslim, Arab, Sikh, and South Asian communities and various U.S. government agencies, including the Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), the State Department, and the Department of Transportation, to address the increased civil rights concerns that these communities have had since September 11, 2001. The issue of naturalization delays was on the agenda of the last two meetings, which occurred on January 23 and March 26, 2008. At these meetings, the FBI and U.S. Citizenship and Immigration Services, a component of DHS, provided updates and responded to questions regarding their efforts to reduce the backlog in processing naturalization applications. Although responsibility for processing naturalization applications ultimately rests with DHS and FBI, I will continue to address this issue at our bi-monthly meetings and to raise it with officials of those agencies.

14. Will you commit to us that in the 2008 elections the Division won't engage in the kind of politically driven decision-making in voting matters that we saw in the past under this Administration?

Answer: I am committed to the vigorous and even-handed enforcement of the federal election statutes. If confirmed, I will ensure that the Division's enforcement decisions will be made based on the facts and the law.

15. There were reports of voter deception and intimidation around the country in the 2006 election. Threatening letters targeted Latino voters in California. There were misleading phone calls in Virginia, deceptive fliers in Maryland, and blatant anti-immigrant intimidation of voters at the polls in Arizona. Voter intimidation and deception are proven methods of disenfranchising minority voters.

a. What are you doing to anticipate and deter such tactics in this year's election?

Answer: I share your concerns about voter intimidation. I believe that the Civil Rights Division has an important role to play in preventing illegal voter suppression and intimidation by vigorously enforcing the federal statutes within its jurisdiction.

A major component of the Department's work to protect voting rights is the Voting Section's election monitoring program, which is among the most effective means of ensuring that federal voting rights are protected and respected on Election Day. In many cases, the presence of Department of Justice personnel alone may be enough to deter or prevent discrimination at the polls. For the 2008 elections, the Department will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Department will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws.

Such extensive efforts require substantial planning and resources. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. The Department takes a proactive approach to identifying locations where problems may occur. To that end, Department officials will continue to meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities, as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general election to provide a forum for discussion of State and local officials' concerns.

As in prior years, in 2008, the Department will continue to monitor States' compliance with the requirements of the Voting Rights Act as well as other statutes. In that regard, we will closely monitor compliance with our numerous court orders, consent decrees, and other agreements, many of which will be in effect through the 2008 election cycle.

The Department's efforts to ensure voter access in accordance with federal law will include training a responsible official, the District Election Official (DEO), in every U.S. Attorney's Office across the country on ballot access laws to stand ready to protect the voting rights of all Americans.

On Election Day in November, Department personnel here in Washington will also be ready with numerous phone lines to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We will have personnel at the call center who are fluent in Spanish, and the Division's language interpretation service will provide translators in other languages.

- b. How many investigations has the Division pursued since 2001 involving potential violations of Section 1971(b) of the Civil Rights Act of 1957[,] which prohibits threatening, intimidating or coercing voters?
- c. How many investigations has the Division pursued since 2001 involving potential violations of Section 11(b) of the Voting Rights Act, which bars conduct deemed intimidating, threatening or coercive to voters?

Answer (b – c): It is my understanding that the Division has opened approximately 37 investigations that include allegations of intimidation, threats, or coercion since 2001. These investigations implicate multiple statutes, including Section 11(b) and Section 1971(b). 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, which can also be obtained under Section 2 of the Voting Rights Act if the misconduct has a racially discriminatory intent or result.

- d. It appears that the Division has brought very few cases under Section 11(b) since the Act was passed. Its most recent case under this statute involved a suit brought on behalf of white voters in Noxubee, Mississippi. Does the Division provide training on enforcement of Section 11(b)? Please provide copies of any training materials used to educate Voting Section attorneys about this provision of the Act.

Answer: It is my understanding that 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, which can also be obtained under Section 2 of the Voting Rights Act if the misconduct has a racially discriminatory intent or result.

Enclosed are examples of written materials used in training Voting Section attorneys on the enforcement of federal voting laws that prohibit threatening, intimidating, or coercive actions aimed at voters. In addition, attorneys in the Voting Section are provided copies of the statutes the Section is responsible for enforcing, and they also have access to the publicly-available material found on the Voting Section Home Page on the Department's

website (see <http://www.usdoj.gov/crt/voting/index.htm>). Furthermore, the Voting Section has an active mentoring program whereby senior attorneys in the Section provide mentoring and leadership to junior attorneys to ensure they are properly trained as to their roles and responsibilities with regard to the enforcement of all federal voting laws.

16. Anti-immigrant sentiment has been fueled by political campaigns exploiting the issue of immigration reform. Given the unfounded allegations by anti-immigrant groups of widespread voting by illegal immigrants in the past, what is the Division doing to prevent harassment of Asian American and Latino voters this year?

Answer: I share your concerns about voter intimidation. If confirmed, I will ensure that the Division continues to vigorously enforce all federal civil rights laws.

For example, I will ensure that the Division continues a robust election monitoring program to protect the voting rights of all citizens, including Asian and Hispanic voters. As noted above, in many cases, the presence of Department of Justice personnel alone may be enough to deter or prevent illegal discrimination at the polls. We will continue to take a proactive approach to potential Election Day problems and issues by working to identify locations where problems are likely to occur. Under this proactive approach, the Department can pre-position personnel both to document and address such issues as arise on Election Day and deter potential problems.

I will ensure that the Division will continue its outreach to Hispanic and Asian community and advocacy organizations, as well as other groups representing language and other minority citizens. The Division will also continue its outreach to state and local election officials to advise them of the requirements of federal law and urge their voluntary compliance.

17. I'm concerned that the Department has reduced its resources for reviewing requests under Section 5 of the Voting Rights Act. Under the Clinton Administration, the Department typically had about 20 civil rights analysts permanently dedicated to reviewing Section 5 cases but only 12 analysts were left as of January 2007, even though the Department received a record 40 percent increase in requests for approval last year. Personnel who usually work on other issues had to assist in reviewing requests. While other personnel can help temporarily, that's no substitute for ensuring that there are enough full-time staff assigned to review these submissions.

Questions:

- a. Do you agree that the Department's commitment to Section 5 should include the resources necessary to review Section 5 submissions within the legal deadline? Why have you allowed the number of analysts to drop so sharply?
- b. The problem will only grow worse as the 2010 Census approaches. After each Census, states adjust their election districts, state-wide redistricting efforts, leading to an increase in the number of submissions to the

Department. Traditionally, the Department would begin planning for that increase well before the Census. Have you considered how the Department will handle the increase in submissions after the Census?

Answer (a-b): If confirmed, I will ensure that the Voting Section has the tools and resources it needs to fully and fairly enforce the laws. With regard to the Section 5 unit in the Department's Voting Section, all attorneys, including managers, participate in the review of voting changes under Section 5 as the need arises. In terms of civil rights analysts, it is my understanding that in January 2001, the Section had 14 civil rights analysts, compared to 13 on April 15, 2008. There are also two contract personnel currently engaged in the analysis of Section 5 submissions. Additionally, the Department plans to increase staffing in preparation for the increased number of submissions after the 2010 Census. Finally, the Department has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions online. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory.

18. In addition to the loss of personnel, I'm concerned about reports of low morale in the Department's Section 5 Unit. It's been widely reported that morale in the Section 5 unit was at an especially low level during the tenure of former chief John Tanner and the former Acting Deputy Chief for Section 5, Yvette Rivera, both of whom are currently under internal investigation. 13 of the analysts who review Section 5 requests have left since 2003 – that's more than are now in the Section. Recently, Teresa Lynn, an African American civil rights analyst who served for 33 years in the Section 5 unit, said she retired because of "fear of retaliation" and "disparate treatment of civil rights analysts based on race."

Questions:

- a. Do you agree that these allegations of race discrimination and poor morale in the Voting Section raise serious concerns that should be addressed?
- b. What have you done to improve the morale of the Section 5 unit and to address the Equal Employment Opportunity complaints filed under Mr. Tanner's tenure?

Answer (a – b): I take allegations of race discrimination and poor morale very seriously. As a graduate of the Wharton School with a concentration in management, I know that morale is instrumental to the success of any organization. I have worked to maintain an environment of open dialogue within the Civil Rights Division. I am ensuring that the front office is in regular contact with the managers of each Section, including the Voting Section, to address any problems that may arise.

I began overseeing the Voting Section in December 2007. I have spoken recently with the section's management about morale. It is my understanding that morale in the Voting Section's Section 5 unit is generally good.

I also take very seriously allegations of discrimination in the workplace. The Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. I have notified all employees of the Division that I am fully committed to ensuring that all personnel decisions in the Division are consistent with principles of fairness as well as all applicable laws, rules, and regulations. Soon after I became Acting Assistant Attorney General, I issued a memorandum (a copy of which was posted on the Civil Rights Division's intranet and is attached to these responses) in which I adopted and pledged to enforce the Guidance on Personnel Matters previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. This memorandum was a reminder that "there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism."

There are well-established Equal Employment Opportunity complaint procedures in place at the Department of Justice to address allegations of discrimination. Additionally, last year all employees of the Civil Rights Division were required to receive training on harassment in the workplace. The Division also has an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns.

19. In 2002, the Department changed its hiring procedures to give political appointees the final say in the process. It's my understanding that, at least in some cases, political appointees in the Division still conduct the final interviews of applicants for career attorney positions. Is that correct?

Answer: Throughout my tenure, candidates for career attorney positions have been hired through a collaborative process. They are interviewed by career attorneys (including, but not limited to, career Section Chiefs) and the Deputy Assistant Attorney General responsible for supervising the relevant section on behalf of the Office of the Assistant Attorney General. A Deputy Assistant Attorney General can be either a career or a non-career Senior Executive Service attorney. On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

Soon after I became Acting Assistant Attorney General, I issued a memorandum (a copy of which was posted on the Civil Rights Division's intranet and is attached to these responses) in which I adopted and pledged to enforce the Guidance on Personnel Matters previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. This memorandum was a reminder that "there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism."

In addition, Attorney General Mukasey has instituted a new practice which requires that all new political appointees (Presidential Appointees with Senate Confirmation, Senior Executive Service Noncareer Appointees, and General Schedule C Appointees) receive detailed briefings on prohibited personnel practices and merit system principles. These briefings are conducted during the standard personnel orientation process. To ensure that current political appointees at all levels received this information, the Attorney General issued a memorandum mandating that all appointees review the materials and confirm their understanding of prohibited personnel practices and merit systems principles.

The Attorney General's Honors Program is another process through which the Civil Rights Division hires career attorneys each year. The Honors Program is Department-wide, and it is administered and promoted by the Office of Attorney Recruitment and Management (OARM). It is my understanding that in 2007, applications for Honors Program attorneys who stated an interest in the Civil Rights Division were reviewed only by career attorneys, and the selected applicants were interviewed by career employees of the Division. A committee of career employees determined which candidates received offers of employment.

Paid summer interns are hired through the Attorney General's Summer Law Intern Program (SLIP), which is also administered by OARM. The process for hiring SLIP candidates is administered in much the same way as the Honors Program. It is my understanding that in 2007, career attorneys in the Civil Rights Division reviewed, interviewed, and selected SLIP interns.

Since I have been at the Division, unpaid student interns have been interviewed only by career attorneys in the sections. In the past, resumes of recommended student interns were sent to the Office of the Assistant Attorney General. I have notified the Section Chiefs that they no longer need to forward these resumes. On March 31, 2008, I initiated a review to determine whether a written policy would be helpful in clarifying the process of hiring unpaid student interns.

20. You testified that since you have been the Acting Assistant Attorney General for Civil Rights hiring has been conducted in a collaborative fashion, with political leadership and career staff participating in a collective process.

Questions:

- a. Since you joined the Division, have political appointees ever interviewed career attorneys without the participation of the Section Chief to whom the attorney would report if hired? Have you participated in such interviews?

Answer: While I was a Deputy Assistant Attorney General, Section Chiefs and I often interviewed candidates together. There were times, however, when Section Chiefs had already interviewed the candidate prior to forwarding the list of candidates for a second round interview. It made little sense to require the Section Chief to interview the

candidate again. I have adopted a flexible approach to accommodate the preferences of the Section Chief.

- b. You stated that you have required career Section Chiefs to obtain permission from your office before hiring legal interns? Does your office review the resumes of legal intern applications? If so, who conducts this review and what criterion are applied to these applicants?

Answer: Paid summer interns are hired through the Attorney General's Summer Law Intern Program (SLIP), which is also administered by OARM. The process for hiring SLIP candidates is administered in much the same way as the Honors Program, which is described in response to Question 19. It is my understanding that in 2007, career attorneys in the Civil Rights Division reviewed, interviewed, and selected SLIP interns.

Since I have been at the Division, unpaid student interns have been interviewed only by career attorneys in the sections. In the past, resumes of recommended student interns were sent to the Office of the Assistant Attorney General. I have notified the Section Chiefs that they no longer need to forward these resumes. On March 31, 2008, I initiated a review to determine whether a written policy would be helpful in clarifying the process of hiring unpaid student interns.

21. Questions:

- a. Have you ever suggested a candidate be considered for hire into a career position, who had not applied through the regular application process but had been referred to you by Wan Kim?
- b. Did you ever suggest considering hire of an applicant who had been referred to you by Bradley Schlozman?
- c. Did you ever suggest considering hire of an applicant who had been referred to you by any other former or current political appointee, including Wan Kim, Bradley Schlozman, or any other former Assistant Attorney General? If yes, please explain in detail the circumstances, who made the referral, and the reasons you believed it was appropriate to consider applicants who had been referred outside the regular application process?

Answer (a – c): To the best of my recollection, I have not received any referrals from former Assistant Attorneys General after they left the Division. I do, however, recall receiving two referrals for career attorney positions from a Democratic political appointee and referring those resumes to the Administrative Section to be added to the resume bank. Additionally, during my tenure, my colleagues in the Office of the Assistant Attorney General occasionally have shared resumes of applicants. All such applicants, as far as I am aware, have gone through the regular application process.

22. At your hearing, when I asked you about widespread allegations that hiring in the Civil Rights Division had been influenced by political affiliation, you stated repeatedly that those matters were under investigation by the Inspector General and Office for Professional Responsibility and you could not answer. We have been informed by those offices that they do not instruct witnesses not to discuss their testimony and they have not instructed anyone not to discuss their investigation.

Questions:

- a. What is the basis for your refusal to answer these questions?
- b. In view of the guidance of the Inspector General and the Office of Professional Responsibility, please review the transcript and provide a response to each question that you declined to answer on this basis. If you continue to decline to answer these questions, please give a specific reason as to why you refuse to answer each question and cite the authority upon which you rely.

Answers (a-b): My experience as a career attorney working for the Democratically appointed Assistant Secretary of the Army (Manpower and Reserve Affairs), who supervised the Army Inspector General's review of allegations of a civilian massacre during the Korean War, was that we did not comment on the ongoing Inspector General's investigation.

I have great respect for the integrity of the Department of Justice OPR/OIG investigation and have cooperated fully. Before my nominations hearing, I had not spoken directly to the Office of Professional Responsibility or the Office of the Inspector General. However, I had read a document request from OPR/OIG that was sent to my predecessor, which provided as follows: "Please do not disclose the nature of this request beyond that reasonably necessary to fulfill the request. Any such disclosure could impede the investigation and thereby interfere with the enforcement of law." Since the hearing, OPR/OIG has informed me that I may respond to the questions posed at the hearing.

With respect to the questions posed at the hearing, I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I 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.

23. You stated that you had provided documents to investigators, but had not provided oral evidence in the investigation. It seems surprising that someone who has been a political appointee in the Division for the past two years – a period during which abuses are alleged to have occurred – would not have been interviewed by investigators, particularly since you had the power to participate in the hiring process, approve promotions, awards, performance evaluations and other personnel actions.

Questions:

- a. Has anyone from the Inspector General's office or the Office of Professional Responsibility spoken with you at any time about the investigation?
- b. Have you reached out to the investigation to volunteer information?
- c. Is it your position that you do not possess any relevant information?

Answer (a – c): Since the hearing, I have been interviewed by the Office of the Inspector General and the Office of Professional Responsibility. My understanding is that the allegations to which you refer occurred prior to my tenure at the Civil Rights Division.

24. As a manager, you have a responsibility – separate and apart from the investigation – to determine what may have gone wrong in your Division and to take immediate steps to fix it. The Division has gone through a very troubled time that has sullied its reputation, undermined its credibility as a law enforcement agency and impaired its effectiveness. There have been reports of politicized hiring and law enforcement, involuntary transfers because political leaders did not agree with the recommendations of career attorneys, the inappropriate use of awards and improper tampering with performance evaluations. This is a time when the Division needs bold leadership to reestablish its credibility and effectiveness.

Questions:

- a. Do you acknowledge that there have been problems in the Civil Rights Division in recent years? If so, what have you found to be the most serious problems?
- b. Please describe the steps you have taken to investigate these problems.
- c. Please describe what you have found and the steps you have taken to remedy these problems.

Answer (a – c): All large organizations have management challenges. My understanding is that these allegations relate to an individual with whom I did not overlap in the Division for a substantial time. I take these allegations very seriously and have been cooperating fully with ongoing investigations into these matters.

I am concerned about the public perception of the Civil Rights Division, which differs from my day-to-day experience. I work alongside many dedicated attorneys at all levels of the Division, who care deeply about civil rights, work long hours, and spend many days away from their families in order to vigorously enforce the federal civil rights laws. I have seen the faces of our newest hires and our most experienced veterans light up when they discuss the work they do to help the most vulnerable victims of society. I hope to have the opportunity to focus the public's attention on the work of these fine, dedicated employees.

I have issued a memorandum (a copy of which is posted on the Civil Rights Division intranet and is attached to these responses) to all attorneys in which I adopted and pledged to enforce the *Guidance on Personnel Matters* previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. My memorandum was a reminder "that the Department of Justice is an Equal Opportunity/Reasonable Access Employer" and that "there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism."

Attorney General Mukasey also has instituted a new practice which requires that all new political appointees (Presidential Appointees with Senate Confirmation, Senior Executive Service Noncareer Appointees, and General Schedule C Appointees) receive detailed briefings on prohibited personnel practices and merit system principles. These briefings are conducted during the standard personnel orientation process. To ensure that current political appointees at all levels received this information, the Attorney General issued a memorandum mandating that all appointees review the materials and confirm their understanding of prohibited personnel practices and merit systems principles.

In addition, on March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary. If the final report of the OPR/OIG investigation includes recommendations, I will ensure to the full extent of my authority that any appropriate actions are taken. The Division also has an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns.

25. In considering your nomination, it is important to know whether you participated, either actively or by passively supporting, politically motivated decision-making in the Division's personnel matters. Did you ever hear anyone in the Division say anything suggesting that political affiliation should be a factor in personnel matters in the Division? If so, please describe the circumstances and state whether you made any effort to prevent political considerations from improperly affecting personnel decisions.

Answer: I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I 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.

I have issued a memorandum (a copy of which is posted on the Civil Rights Division intranet and is attached to these responses) to all attorneys in which I adopted and pledged to enforce the *Guidance on Personnel Matters* previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. My memorandum was a reminder "that the Department of Justice is an Equal Opportunity/Reasonable Access Employer" and that "there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism."

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26. There have been reports that Mr. Schlozman sought to hire attorneys who were members of the Republican National Lawyers Association, a group to which you once belonged. Did you ever have reason to believe that any of the Division's political appointees were using the Republican National Lawyers Association as a source for hiring career attorneys? If so, please describe the circumstances and state whether you made any effort to prevent political considerations from improperly affecting personnel decisions.

Answer: No. I have no reason to believe that any of the Division's political appointees were using the Republican National Lawyers Association as a source for hiring career attorneys.

27. Many of us were appalled to read a report on the front page of the Washington Post last June that the Division had tried to transfer three highly-regarded female attorneys out of the Appellate Section for political reasons.

Questions:

- a. Do you acknowledge that the effort to transfer these attorneys – Tovah Calderon, Teresa Kwong, and Karen Stevens – was improper? If so, please describe the circumstances and state whether you made any effort to prevent political considerations from improperly affecting personnel decisions.

Answer: I did not take part in any decisions to transfer the three attorneys you mention and do not have personal knowledge of the circumstances. I know that they have been transferred back into the Appellate Section. It is my understanding that these transfers are the subject of an OPR/OIG investigation.

- b. Did you know about the effort to transfer them before it was reported in the press? When did you learn about it?

Answer: I learned about the transfers after they were reported in the press.

- c. According to the Washington Post, Mr. Schlozman said he wanted to replace attorneys in the Appellate Section with “good Americans.” When did you first become aware that Mr. Schlozman had expressed such views? If you learned that Mr. Schlozman may have applied political criteria to personnel decisions before it was reported in the press, please describe the circumstances in which you became aware of that fact, and state whether you made any effort to prevent political considerations from improperly affecting personnel decisions.

Answer: I started working in the Civil Rights Division in March 2006, and Mr. Schlozman left the Division that same month. I did not overlap with him for any substantial period of time, nor do I have any personal recollection of him using the term “good Americans.” I first became aware that Mr. Schlozman was reported to have used that expression some time after he left the Civil Rights Division.

As noted above in response to Question 25, I issued a memorandum (a copy of which was posted on the Civil Rights Division intranet and is attached to these responses) to all attorneys in which I adopted and pledged to enforce the *Guidance on Personnel Matters* previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. This memorandum was a reminder “that the Department of Justice is an Equal Opportunity/Reasonable Access Employer” and that “there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism.” In addition, on March 31, 2008, I initiated a review of the Division’s hiring policies that were in place prior to my tenure to determine whether any revisions are necessary. The Division also has an internal Ombudsman to meet with Division employees on a wide variety of issues and concerns.

28. Waterboarding and the other “harsh interrogation” practices that the CIA has pursued are torture, regardless of the President’s attempts to define them as something else. As Assistant Attorney General, you are responsible for prosecuting unconstitutional uses of force by law enforcement officers. You are also responsible for enforcing the Civil Rights of Institutionalized Persons Act to challenge unconstitutional conditions of detention in prisons and jails.

Questions:

- a. Do you think that waterboarding is unconstitutional when used as an interrogation tactic by law enforcement officers or as punishment against a prisoner?

Answer: The Civil Rights Division enforces federal civil rights laws against domestic law enforcement officers. Specifically, the Criminal Section enforces 18 U.S.C. §§ 241 and 242, which prohibit conspiring to deprive or depriving individuals of constitutional

liberties under color of law. The willful use of excessive force by a domestic law enforcement officer, regardless of the type of force used, may violate the Fourth, Eighth, or Fourteenth Amendment of the United States Constitution. While I have not encountered this set of facts during my tenure at the Civil Rights Division, it is difficult to imagine a scenario in which such conduct by a domestic law enforcement officer would not violate federal civil rights law.

- b. If waterboarding were used on a prisoner in custody in the United States, would it violate the Constitution? Would you be willing to prosecute criminally the perpetrator or perpetrators?

Answer: I am committed to the vigorous enforcement of federal criminal civil rights statutes, including those laws that prohibit the willful use of excessive force or other acts of misconduct by law enforcement officials. Although the vast majority of law enforcement officers carry out their difficult duties in a professional manner, no one is above the law. While I have not encountered this set of facts during my tenure at the Civil Rights Division, it is difficult to imagine a scenario in which such conduct by a domestic law enforcement officer would not violate federal civil rights law. I can assure this Committee that the Division will continue to take appropriate action when it receives allegations of violations of federal civil rights law.

- c. Would you file a civil suit if a jail engaged in waterboarding either to force detainees to talk or as a disciplinary practice?

Answer: I am committed to thoroughly examining all appropriate civil and criminal remedies available to address any unconstitutional practices by domestic law enforcement officers.

Mark Kappelhoff

Civil Rights Division

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2007 Ballot Access and Voting Integrity Symposium

Mark Kappelhoff
Chief, Criminal Section
Civil Rights Division

Overview of the Civil Rights Division's Criminal Section

- The Division's sole criminal prosecutor
- Violent interference with liberties and rights defined in the Constitution or federal law

Jurisdiction Over Voting/Election Matters

- Discrimination or intimidation targeting voters based on their race, color, religion, or national origin.
- Ballot Access
- Coordinate with the Criminal Division and the Voting Section

Statutes Enforced

- Voter Intimidation - Force or Threats of Force
 - 18 U.S.C. 241 (Conspiracy)
 - 18 U.S.C. 242 (Color of Law)
 - 18 U.S.C. 594 (Intimidation of Voters)
 - 18 U.S.C. 245(b)(5) (Federally Protected Activities)
 - 42 U.S.C. 1973gg-10(1) (Intimidation in Registering and Voting)

Statutes Enforced Cont.

- Vote Buying

- Voter Suppression

Points of Contact

- Mark Kappelnoff, Chief of the Criminal Section, (202) 514-3204
- Jim Walsh (202) 514-6346



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 12, 2007

MEMORANDUM TO ALL ATTORNEYS

FROM: Grace Chung Becker
Acting Assistant Attorney General

SUBJECT: Guidance on Personnel Matters

I adopt and will enforce the principles announced by former Assistant Attorney General Wan J. Kim in the *Guidance on Personnel Matters* memorandum he issued on June 29, 2007. I too am fully committed to ensuring that all personnel decisions within the Civil Rights Division are consistent with principles of fairness as well as all applicable laws, rules and regulations. In particular, I wish to remind you that the Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. Consistent with applicable law, Department policies and my own practice, there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employee organization, or personal favoritism. See generally <http://10.173.2.12/jmd/employeeerights.php>.

Notably, each of you should be aware of the requirements of 5 U.S.C. § 2302, which sets forth the following "prohibited personnel practices" applicable to personnel actions, including but not limited to appointments, promotions, reassignments, details, pay, awards, and adverse actions:

A federal employee authorized to take, direct others to take, recommend or approve any personnel action *shall not*:

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) solicit or consider oral or written employment recommendations unless such recommendations are based on personal knowledge or records of job-related abilities or characteristics;

(3) coerce the political activity of any person or take any action against any employee or applicant as a reprisal for his/her refusal to engage in such political activity;

(4) deceive or willfully obstruct anyone's right to compete for employment;

(5) influence anyone to withdraw from competition for any position for the purpose of improving or injuring the employment prospects of any other person;

(6) give an unauthorized preference or advantage to any employee or applicant for employment for the purpose of improving or injuring the employment prospects of any particular employee or applicant;

(7) engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives) within the agency in which the federal employee serves as a public official;

(8) engage in reprisal for whistle blowing by taking, failing to take, or threatening to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs – if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official);

(9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;

(10) discriminate for or against any employee or applicant based on personal conduct (other than criminal convictions) which does not adversely affect the on-the-job performance of the employee, applicant, or others;

(11) knowingly take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and

(12) take or fail to take any other personnel action, if taking or failing to take action violates any law, rule or regulation implementing or directly concerning merit system principles contained in 5 U.S.C. § 2301.

5 U.S.C. § 2302; see also <http://www.usdoj.gov/jmd/ps/chpt4-1.html>;
<http://www.usdoj.gov/oarm/attvacancies.html>; <http://www.osc.gov/ppp.htm#q1>.

For more information, please contact the Division's Human Resources Office (202-514-4153) or the Ombudsman. I am also personally available to address any concerns that you may have.