

Testimony of
The Honorable Wan J. Kim

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U.S. Department of Justice
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Before the
Committee on the Judiciary
United States Senate

Concerning
Activities of the Civil Rights Division

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Thank you. Mr. Chairman, Ranking Member Leahy, Members of the Committee, it is a pleasure to appear before you to represent President Bush, Attorney General Gonzales, and the dedicated professionals of the Civil Rights Division.

I have served as Assistant Attorney General for the Civil Rights Division for just over one year now. I am honored to serve the people of the United States in this capacity. I am pleased to report that the past year was full of outstanding accomplishments in the Civil Rights Division, where we obtained many record levels of enforcement. I am proud of the professional attorneys and staff in the Division - men and women whose talents, dedication and hard work made these accomplishments possible.

Next year, the Division will celebrate its 50th Anniversary. As this historical date nears, I have reflected upon the work of the Division not only during my own time of service, but over the past half-century. Since our inception in 1957, the Division has achieved a great deal and we have much of which to be proud. While citizens of all colors, from every background, living in all pockets of the country - rural, urban, north and south - have seen gains made on the civil rights front, one need not look back very far to recall a very different landscape.

This point was made more vivid for me when I travelled with Attorney General Gonzales to Birmingham, Alabama, earlier this year. We attended the dedication of the 16th Street Baptist Church as a National Historic Landmark. In 1963, racists threw a bomb in this historically black church, killing four little girls who were attending Sunday School. Horrific incidents like this sparked the passage of the Civil Rights Act of 1964 - the most comprehensive piece of civil rights legislation passed by Congress since Reconstruction. While much has been achieved under that piece of legislation and other civil rights laws, the Division's daily work demonstrates that

discrimination still exists. There is still much work to be done, but we are working toward the goal famously described by Dr. Martin Luther King of a society rid of discrimination, where people are to be judged on the content of their character and not the color of their skin.

PROTECTING VOTING RIGHTS

The right to vote is the foundation of our democratic system of government. The President and the Attorney General strongly supported the Voting Rights Act Reauthorization and Amendments Act of 2006, named for three heroines of the Civil Rights movement, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King. During the signing ceremony at the White House, President Bush said, "My administration will vigorously enforce the provisions of this law, and we will defend it in court." The Civil Rights Division is committed to carrying out the President's promise. In fact, the Division is already defending the Act against a constitutional challenge in federal court here in the District of Columbia.

The Civil Rights Division is responsible for enforcing several laws that protect voting rights, and I will discuss the Division's work under each of those laws. First, however, it is worth noting that under our nation's federal system of government, the primary responsibility for the method and manner of elections lies with the states. Article I, Section 4 of the Constitution states, "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." Thus, each state holds responsibility for conducting its own elections. However, Article I, Section 4 goes on to provide, "[B]ut the Congress may at any time by Law make or alter such Regulations" Therefore, except where Congress has expressly decided to legislate otherwise, states maintain responsibility for the conduct of elections.

Congress has passed legislation in certain distinct areas related to voting and elections. These laws include, among others, the Voting Rights Act of 1965 and subsequent amendments thereto, the Uniformed and Overseas Citizen Absentee Voting Act of 1986 ("UOCAVA"), the National Voter Registration Act of 1993 ("Motor Voter" or "NVRA"), and the Help America Vote Act of 2002 ("HAVA"). The Civil Rights Division enforces the civil provisions of these laws, while the Criminal Division supervises all Department prosecutors in enforcement of the criminal and anti-fraud provisions of these laws.

In the past year, the Voting Section has brought lawsuits under each of these statutes. In fact, the 17 new lawsuits we have filed over the past year is double the average number of lawsuits filed in the preceding 30 years. Additionally, because 2006 is an election year, the Division has worked overtime to meet its responsibilities to protect the voting rights of our citizens.

As members of this Committee are certainly aware, 2006 was a landmark year for the Voting Rights Act. This summer, the President signed the Voting Rights Act Reauthorization and Amendments Act of 2006, which renewed for another 25 years certain provisions of the Act that had been set to expire. The Voting Rights Act has proven to be one of the most successful pieces of civil rights legislation ever enacted. However, as long as all citizens do not have equal access to the polls, our work is not finished. As President Bush said, "In four decades since the Voting Rights Act was first passed, we've made progress toward equality, yet the work for a more perfect union is never ending."

The Civil Rights Division is committed to ensuring that all citizens have equal access to the democratic process. During Fiscal Year 2006, the Division's Voting Section has continued to aggressively enforce all provisions of the Voting Rights Act, filing seven lawsuits to enforce various provisions of the Act. These cases include a lawsuit that we filed and resolved under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters -

including at least three United States citizens on active duty with the United States Army - based entirely on their perceived race and ethnicity. We also filed a Section 2 lawsuit earlier this year on behalf of African-American voters that challenges the method of elections in Euclid, Ohio. This case is currently in litigation.

Our most recent success under Section 2 involves the Division's lawsuit against Osceola County, Florida, where we brought a challenge to the county's at-large election system. Last month, we prevailed at trial. The court held the at-large election system violated the rights of Hispanic voters under Section 2, and the court ordered the county to abandon it.

The Section also continues to litigate a case in Mississippi under Sections 2 and 11(b) of the Voting Rights Act. This case is unusual for several reasons: it is the most extreme case of racial exclusion seen by the Voting Section in decades; the racial discrimination is directed against white citizens; and we are not aware of any other case in which the Voting Section has had to move for a protective order to prevent intimidation of witnesses.

We will continue to closely investigate claims of voter discrimination and vigorously pursue actions on behalf of all Americans wherever violations of federal law are found.

The Division also had a record-breaking year with regard to enforcement of Section 208 of the Voting Rights Act. In Fiscal Year 2006, the Division's Voting Section obtained three out of the eight judgments ever obtained under Section 208 since it was enacted twenty-four years ago. As the Committee knows, Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth. This year the Division brought 3 successful cases under Section 208. During the past six years, we have brought six of the eight cases ever filed under Section 208 in the history of the Act, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

This year, the Voting Section processed the largest number of Section 5 submissions in its history. The Division made two objections to submissions pursuant to Section 5 in Georgia and Texas, and filed its first Section 5 enforcement action since 1998. Additionally, the Division is vigorously defending the constitutionality of Section 5 of the Voting Rights Act in an action brought by a Texas jurisdiction. We also have consented to several actions this year in jurisdictions that satisfied the statutory requirements for obtaining a release, or "bailout," from Section 5 coverage. The Voting Section has begun a major enhancement of the Section 5 review process to minimize unnecessary paperwork involved with submissions, make improvements in training, and expand its outreach.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress this summer, remains strong, with four lawsuits filed in FY 06. During the past 6 years, the Civil Rights Division has litigated more cases on behalf of minority language voters than in all other years combined since 1965. Specifically, we have successfully litigated 60 percent of all language minority cases in the history of the Voting Rights Act. Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of our lawsuit, Boston now employs five times more bilingual poll workers than before. As a result of our lawsuit, San Diego added over 1,000 bilingual poll workers, and Hispanic voter registration increased by over 20 percent between our settlement in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters, and Vietnamese voter registration rose 37 percent. Our lawsuits also spur voluntary compliance: after the San Diego lawsuit, Los Angeles County added

over 2,200 bilingual poll workers, an increase of over 62 percent. In many cases, violations of Section 203 are accompanied by such overt discrimination by poll workers that Section 2 claims could have been brought as well. However, we have been able to obtain complete and comprehensive relief through our litigation and remedies under Section 203 without the added expense and delay of a Section 2 claim.

During Fiscal Year 2006, the Division continued to work diligently to protect the voting rights of our nation's military and overseas citizens. The Division has enforcement responsibility for the UOCAVA, which ensures that overseas citizens and members of the military, and their household dependents, are able to request, receive, and cast a ballot for federal offices in a timely manner for federal elections. As a result of our efforts, in Fiscal Year 2006 the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. This year, we filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina, and reached a voluntary legislative solution without the need for litigation in South Carolina. In Alabama and North Carolina, we obtained relief for military and overseas voters in the form of state legislation. We also obtained permanent relief in the form of legislation in a suit originally filed against Pennsylvania in 2004. All of these accomplishments prompted an award from the Department of Defense to the Deputy who supervised all of these cases. The Civil Rights Division will continue to make every effort to ensure that our citizens abroad and the brave men and women of our military are afforded a full opportunity to participate in federal elections.

In Fiscal Year 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act since immediately following the passage of the Act in 1995. We filed lawsuits in Indiana, Maine, Missouri, and New Jersey. The Voting Section's suits against New Jersey and Maine also alleged violations of the Help America Vote Act ("HAVA"). We resolved the suits with settlement agreements that set up timetables for implementation of a statewide computer database. The suit against Indiana, which admitted that its lists contained more than 300,000 ineligible voters, also was settled by consent decree. We are still litigating a suit against Missouri regarding its failure, over the course of many years, to remove from its voter rolls registrants who had moved or had died. The state's failure in that regard caused dozens of jurisdictions to report that voter registrations exceeded the total number of citizens eligible to vote.

With January 1, 2006, came the first year of full, nationwide implementation of the database and accessible voting machine requirements of HAVA. Accordingly, we began making these statutory requirements a priority for enforcement. HAVA requires that each state and territory have a statewide computerized voter registration database in place for federal elections, and that, among other requirements, there be accessible voting for the disabled in each polling place in the nation. Many states, however, did not achieve full compliance and are struggling to catch up. States missed these deadlines for many reasons, including ineffective time lines, difficulty resolving compliance issues, and various problems with vendors.

The Division worked hard to help states prepare for the effective date of January 1, 2006, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues. We have been, and remain, in close contact with many states in an effort to help them achieve full compliance at the earliest possible date. Where such cooperative efforts fail, the Division seeks enforcement of HAVA through litigation.

A significant example of the success of the Division's cooperative approach in working with states on HAVA compliance came in our agreement with California on compliance with HAVA's

database provisions. Prior to the January 1, 2006, deadline, the Voting Section reached an important memorandum of agreement with California regarding its badly stalled database implementation. California's newly appointed Secretary of State sought the Division's help to work cooperatively on a solution, and the Division put significant time and resources into working with the state to craft a feasible agreement providing for both interim and permanent solutions. We are very proud of this agreement, which has served as a model for other states in their database compliance efforts.

Where cooperative efforts prove unsuccessful, the Division enforces HAVA through litigation. During Fiscal Year 2006, the Section filed lawsuits against the states of New York, Alabama, Maine, and New Jersey. In New York and Maine, the states had failed to make significant progress on both the accessible voting equipment and the statewide databases. In Alabama and New Jersey, the states had not yet implemented HAVA-compliant statewide databases for voter registration. In addition, we filed a local HAVA claim against an Arizona locality for its failure to follow the voter information posting requirements of HAVA. The Section also successfully defended three challenges to HAVA, and won judgment after a federal trial in Pennsylvania. A separate Pennsylvania state court judgment barring the use of accessible machines was overturned after the Division gave formal notice of its intent to file a federal lawsuit.

A major component of the Division's work to protect voting rights is its election monitoring program, which is among the most effective means of ensuring that federal voting rights are respected on election day. Each year the Justice Department deploys hundreds of personnel to monitor elections across the country. Just last week, the Division deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. In total, approximately 900 federal personnel monitored the polls in 69 political subdivisions in 22 states during the general election on November 7, 2006 - a record level of coverage for a midterm election. In CY 2006, we have sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year.

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. To that end, I personally met with representatives of a number of civil rights organizations prior to the election this year, including organizations that advocate on behalf of racial and language minorities, as well as groups who focus on disability rights. During these meetings, I encouraged these groups to share information about their concerns with us so that we could respond appropriately where needed. We made a detailed presentation about the Division's preparations for the general election and our election day activities, distributed information about how to request monitoring for a jurisdiction, and explained how to contact us on election day through our toll free number and internet-based complaint system. I also met with representatives from the National Association of Attorneys General, the National Association of Secretaries of State and other representatives of similar associations before this year's general election. This meeting provided a forum for discussion of state and local officials' concerns, and for the Division to provide information about our election day plans.

On election day, Department personnel here in Washington stood ready. We had numerous phone lines ready to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We had personnel at the call center who were fluent in Spanish, and had the Division's language interpretation service to provide translators in other languages. On Election Day, the Voting Section received approximately 141 calls and 88 e-mail complaints on its website. These 229 complaints resulted in approximately 332 issues raised, as

some complainants had multiple issues. Many of these complaints were subsequently resolved on election day; we will continue the process of following-up on the rest.

CRIMINAL CIVIL RIGHTS PROSECUTIONS

The Civil Rights Division's Criminal Section continues to vigorously enforce federal criminal civil rights protections. This year, our overall conviction rate rose from 91% in FY 2005 to 98% in FY 2006 - the highest conviction rate recorded in the past two decades. Additionally, in FY 2006, we charged 196 defendants with civil rights violations, the highest total number of defendants charged in the past two decades, and have obtained convictions of the second highest number of defendants (159) in the past two decades.

Our criminal prosecutions span the full breadth of the Division's jurisdiction. In color of law matters, we filed 41 cases (up from 29 the previous year) and charged 62 defendants (compared to 45 in the previous year). We achieved a record success rate of 98% convictions in color of law matters, which are arguably our most challenging prosecutions. Additionally, we charged 20 defendants in cases of bias crime, including charges of conspiracy, murder, and post-September 11, 2001 "backlash" crimes.

Our human trafficking efforts continue at an unprecedented pace. Working with the various United States Attorneys' Offices, we charged 111 defendants in 32 cases and obtained 79 convictions, a record number that more than doubled the number of convictions in the previous year. Since 2001, the Department has prosecuted 360 human trafficking defendants, secured almost 240 convictions and guilty pleas, and opened nearly 650 new investigations. That represents a six-fold increase in the number of human trafficking cases filed in court, quadruple the number of defendants charged, and triple the number of defendants convicted in comparison to 1995-2000.

Color of Law Violations

There is no doubt that law enforcement officers are asked to perform dangerous and difficult tasks to serve and protect our citizens. We ask these brave men and women to perform their duties with a professionalism that keeps us all safe from harm and places a great deal of public trust in them. I have no doubt that the overwhelming majority of law enforcement officers and state agents are deeply committed to protecting the private citizens and maintaining the integrity of the public trust. I think we all owe these hard-working men and women a deep sense of gratitude. Unfortunately, there are some who abuse their positions of trust to mistreat those in custody. Such unlawful behavior undermines the tireless efforts of the vast majority of law enforcement officers who perform a tough job with professionalism and courage. When an individual acting under the color of law abuses a position of authority and violates the law, the Civil Rights Division is committed to vigorously pursuing prosecution. The public must be able to trust that no one, including those that wear a badge, is above the law. If that trust is broken, public confidence in the police force is undermined and an already difficult job is made more difficult for those on the force.

During the past 6 years, we have obtained convictions of 50% more law enforcement officials for color of law violations than in the preceding 6 years. In *United States v. Walker and Ramsey*, for example, involved the politically-motivated assassination of the county sheriff-elect at the direction of the incumbent sheriff. In previous state trials, the sheriff had been convicted of murder and sentenced to life in prison, but the other defendants had been acquitted of murder charges. The Department stepped in and sought, successfully, convictions of two of the men, including a former deputy sheriff.

In *United States v. Marlowe et al.*, a federal jury convicted defendant Robert Marlowe, a former Wilson County Jail sergeant and night shift supervisor, of assaulting jail detainees. Marlowe participated in the beating of detainee Walter Kuntz and then failed to provide him with the necessary and appropriate medical care as he lay unconscious on the floor of the jail, resulting in his death. The jury also convicted Marlowe and defendant Tommy Conatser, a former jailor who worked for Marlowe, of conspiracy to assault jail detainees. Marlowe and other officers bragged about the beatings, and filed false and misleading reports to cover up the assaults. During the course of this prosecution, six other former Wilson County Correctional Officers pled guilty to felony charges relating to violations of the civil rights of inmates at the Wilson County Jail. This case was prosecuted in partnership with the U.S. Attorney's Office for the Middle District of Tennessee and the FBI. On July 6, 2006, defendant Marlowe was sentenced to life in prison. Other defendants received prison terms of up to 108 months in prison.

In addition to investigation and prosecution of color of law matters, Criminal Section staff conduct a significant amount of training and outreach. These efforts are designed to help law enforcement agencies prevent the occurrence of these violations. In Fiscal Year 2006, for example, we made presentations on the Criminal Section's civil rights enforcement program to local law enforcement officials attending the FBI's National Academy at Quantico, Virginia. We also made presentations to federal officials such as the FBI and the Department of Homeland Security.

As I noted earlier, I have tremendous respect for the men and women in Police Departments who risk their lives around the country each and every day to ensure that America is a safe place to live. To the extent that the Division can both assist further their mission and promote constitutional policing, we are performing a valuable task.

Hate Crimes

Hate crimes are some of most deplorable and offensive acts that the Division encounters in its prosecutions. During Fiscal Year 2006, the Division has continued to bring to justice those who commit these terrible crimes. For example, in *United States v. Eye and Sandstrom*, the government is seeking the death penalty against defendants who allegedly shot and killed an African-American man because of his race. The government alleges that as the victim walked down the street, the defendants, whom he did not know, drove by and shot at him. Their shots missed the victim, so the defendants allegedly circled the neighborhood until they found him again. One of the defendants got out of the car, rushed up to the victim, and shot him in the chest, killing him. Trial is currently set for January 2007.

Our other cases involve equally disturbing violations. In *United States v. Saldana*, four members of a violent Latino street gang were convicted of participating in a conspiracy aimed at threatening, assaulting, and even murdering African-Americans in a neighborhood claimed by the defendants' gang. In *United States v. Coombs*, a man in Florida pled guilty to burning a cross in his yard to intimidate an African-American family who was considering buying the house next door to his residence. In *United States v. Fredericy and Kuzlik*, one man pled guilty and another will go to trial for his alleged role in pouring mercury, a highly toxic substance, on the front porch and driveway of a bi-racial couple in an attempt to force them out of their home. In another case, *U.S. v. Walker et al.*, we charged three members of a white supremacist organization with assaulting a Mexican American bartender in Salt Lake City at his place of employment. These same defendants allegedly assaulted an individual of Native-American heritage outside another bar in Salt Lake City.

Human Trafficking

The prosecution of the despicable crime of human trafficking continues to be a major element of our Criminal Section's work. The victims of human trafficking are often minority women and children, who are poor, are frequently unemployed or underemployed, and lack access to social safety nets. The Attorney General's initiative on human trafficking has made the prosecution of these crimes a top priority.

In Fiscal Year 2006, the Division continued to aggressively pursue those who commit human trafficking crimes, obtaining a record 79 convictions of human trafficking defendants. Working with the various United States Attorneys' Offices, we charged a record number of sex trafficking defendants (85) and a record number of labor trafficking defendants (26). In addition to prosecuting the perpetrators of these horrible crimes, the Criminal Section also aids their victims. Under the 2000 Trafficking Victims Protection Act, 1,010 trafficking victims from 65 countries have obtained eligibility for refugee-type benefits from HHS with the aid of the Civil Rights Division and other law enforcement agencies.

This year, the Section obtained two of the longest sentences ever imposed in a sex trafficking case in *United States v. Carreto, et al.* Defendants organized and operated a trafficking ring that smuggled Mexican women and girls into the United States and then forced them into prostitution in Queens and Brooklyn, New York. On April 27, 2006, two defendants were sentenced to 50 years in prison and a third defendant was sentenced to 25 years in prison for their crimes.

In *United States v. Arlan and Linda Kaufman*, the defendants, who operated a residential treatment facility for mentally ill adults, forced their severely ill residents to labor on the Kaufmans' farm and to participate as subjects in pornographic videos. The defendants committed fraud when they billed Medicare for this "treatment" they provided the victims. The defendants were charged with conspiracy, forced labor, involuntary servitude, and fraud in a thirty-five-count indictment. On November 7, 2005, a jury convicted the defendants on all counts. On January 23, 2006, Arlan Kaufman was sentenced to serve 30 years in prison and Linda Kaufman was sentenced to serve seven years.

In *United States v. Evelyn and Joseph Djoumessi*, the defendants held a young Cameroonian woman as an involuntary domestic servant for four and a half years. They smuggled the 14-year-old victim into the United States with the false promise of an American education, and then held her in their home, forced her to work, beat her, and sexually assaulted her. In March of this year, the defendants were convicted of conspiracy and involuntary servitude.

In addition to our work in enforcement, the Criminal Section also actively reaches out to educate law enforcement agencies about human trafficking. For example, our human trafficking staff designed and launched a series of interactive human trafficking training sessions broadcast live on the Justice Television Network in which nearly 80% of the U.S. Attorney's Offices participated. The Division is also supporting the 32 task forces funded by the Bureau of Justice Assistance and Office for Victims of Crime by providing training and technical assistance. We are supporting the President's Initiative Against Trafficking and Child Sex Tourism by performing assessments of anti-trafficking activities in targeted countries and making recommendations on program development.

Additionally, a national conference on human trafficking was held this October in New Orleans, Louisiana. Division staff played a central role in developing the program, moderated panels, gave speeches, and lead interactive breakout sessions during the conference. Over six hundred practitioners from law enforcement, non-governmental organizations, and academia attended this very successful conference. At the conference, Attorney General Gonzales announced additional

funding totaling nearly \$8 million for law enforcement agencies and service organizations for the purpose of identifying and assisting victims of human trafficking and apprehending and prosecuting those engaged in trafficking offenses. The funding will be used to create new trafficking task forces in 10 cities around the country.

While we have made tremendous strides in the fight against human trafficking, there is still a great deal of work to be done. The Attorney General's initiative to eradicate this form of slavery will remain a top priority of the Division.

HOUSING AND CIVIL ENFORCEMENT

The Division is charged with ensuring non-discriminatory access to housing, public accommodations, and credit. We understand the importance of these opportunities to American families and we have worked hard to meet this weighty responsibility. During Fiscal Year 2006, the Division's Housing and Civil Enforcement Section has continued its strong commitment to enforcing the Fair Housing Act ("FHA"), the Equal Credit Opportunity Act ("ECOA"), and Title II of the Civil Rights Act of 1964.

On February 15, 2006, the Attorney General launched Operation Home Sweet Home—a concentrated initiative to expose and eliminate housing discrimination in America. In announcing the program the Attorney General stated, "We will help open doors for people as they search for housing. We will not allow discrimination to serve as a deadbolt on the dream of safe accommodations for their family." I am committed to making the Attorney General's pledge a reality, and the Civil Rights Division will continue to dedicate renewed energy, resources and manpower to the testing program through investigations and visits designed to expose discriminatory practices. Under Operation Home Sweet Home, the Civil Rights Division conducted substantially more fair housing tests in Fiscal Year 2006 than in Fiscal Year 2005. In addition to increasing the number of tests, Operation Home Sweet Home also strives to conduct more focused testing by concentrating on areas to which Hurricane Katrina victims have relocated and on areas that, based on federal data, have experienced a significant volume of bias-related crimes.

During the coming year, and in particular under Operation Home Sweet Home, the Division will continue to aggressively combat housing discrimination. The Division has expanded our outreach significantly by creating a new fair housing website (<http://www.usdoj.gov/crt/housing/fairhousing/index.html>), establishing a telephone tip line and a new e-mail address specifically to receive fair housing complaints, and sending outreach letters to over 400 public and private fair housing organizations. In FY 2006, we filed two cases developed through our testing program that allege a pattern or practice of discrimination, and expect to see more in the future as a result of our enhanced testing program.

We continue to enforce the anti-discrimination requirements of Title II. During FY 2006, we filed, and more recently resolved, a Title II lawsuit against the owner and operator of Eve, a Milwaukee nightclub. We alleged that the nightclub discriminated against African-American patrons by denying them admission false reasons, such as that the nightclub was too full or that it was being reserved for a private party. Our settlement agreement requires the nightclub to implement changes to its policies and practices in order to prevent such discrimination. We also continue to monitor compliance with our 2004 consent decree in *United States v. Cracker Barrel Old Country Stores* as the company makes progress toward compliance with the comprehensive reforms mandated by that consent decree.

Notably during Fiscal Year 2006, the Civil Rights Division filed more sexual harassment cases than in any year in its history. Sexual harassment by a landlord is particularly disturbing because

the perpetrator holds both the lease and a key to the apartment. For example, one suit alleges that the owner of numerous rental properties in Minnesota has subjected female tenants to severe and pervasive sexual harassment, including making unwelcome sexual advances; touching female tenants without their consent; entering the apartments of female tenants without permission or notice; and threatening to or taking steps to evict female tenants when they refused or objected to his sexual advances. In another case, the Housing and Civil Enforcement Section obtained a consent decree requiring the defendants, who were property managers, owner, and a maintenance man, to pay \$352,500 in damages to 20 identified aggrieved persons, as well as a \$35,000 civil penalty.

Although most sexual harassment cases are filed under the Fair Housing Act, in Fiscal Year 2006 the Division filed its first-ever sexual harassment case under the Equal Credit Opportunity Act. The complaint alleges that a former vice president of the First National Bank of Pontotoc in Pontotoc, Mississippi, used his position to sexually harass female borrowers and applicants for credit. This case is currently in litigation.

Our lawsuits also protect the rights of Americans to purchase houses as well as rent them. Our fair lending enforcement efforts are another component of our fight against housing discrimination. While a lender may legitimately consider a range of factors in determining whether to provide a candidate a loan, race has no place in this determination. "Redlining" is the term used to describe a lender's refusal to give loans in certain areas based on the racial makeup of the area's residents. The Division is working hard to eliminate this form of discrimination, which places a barrier between Americans and the dream of owning their own home.

We recently filed and resolved a lawsuit against Centier Bank in Indiana, alleging violations of the Equal Credit Opportunity Act and the Fair Housing Act. In this case, we alleged Centier unlawfully failed to provide its lending products and services on an equal basis to minority neighborhoods, thereby denying hundreds of loans to prospective African American and Hispanic residents. Under the settlement agreement, the bank will open new offices and expand existing operations in the previously excluded areas, as well as invest \$3.5 million in a special financing program and spend at least \$875,000 to promote its products and services in these previously excluded areas.

A vital element of the President's New Freedom Initiative is the Division's enforcement of the accessibility provisions of the FHA. The FHA requires that multi-family housing constructed after 1991 include certain provisions to make it usable by people with disabilities. In 2005, we launched our Multi-Family Access Forum, intended to assist developers, architects and others understand the FHA's accessibility requirements, and to promote a dialogue between the developers of multi-family housing and persons with disabilities and their advocates.

In addition to these proactive outreach efforts, the Division continues to actively litigate cases involving housing that is not designed and constructed in accordance with the Fair Housing Act and the Americans with Disabilities Act. We resolved five cases in Fiscal Year 2006 through consent decrees, and in a sixth case, the settlement was filed on September 29, 2006 and entered by the court shortly after the fiscal year ended. We also filed three new design and construction cases which are currently in litigation.

DISABILITY RIGHTS

Since the January 2001 announcement of the President's New Freedom Initiative, the Division's Disability Rights Section has achieved results for people with disabilities in over 2,000 actions under the Americans with Disabilities Act ("ADA"). In FY 2006 alone, the Division achieved favorable results for persons with disabilities in 305 cases and matters, which provided injunctive

relief and compensatory damages for people with disabilities across the country and set major ADA precedents in a number of important areas. The Division also continued its important work under Project Civic Access, a wide-ranging initiative to ensure that towns and cities across America comply with the ADA. Many Americans with disabilities are able to enjoy life in a much fuller capacity as a result of our enforcement activities, and the Division will continue to make our efforts in this area a priority.

Our work under the ADA during FY 2006 involved cases across the country and in a variety of settings, including hospitals, public transportation, restaurants, movie theaters, college campuses, and retail stores.

An example of our work in a hospital setting is an agreement we reached with Laurel Regional Hospital in Maryland on behalf of persons with speech or hearing impairments. The hospital agreed to assess the communication needs of individuals with speech or hearing disabilities and provide qualified interpreters (on-site or video interpreting) as soon as possible when necessary for effective communication.

In the area of public transportation, the City of Detroit agreed to take steps to ensure that public bus wheelchair lifts are operable and in good repair and to provide alternate transportation promptly when there are breakdowns in accessible bus service.

The Division has also entered into agreements with major movie theater companies to make the experience of going to the movies more accessible to all Americans. Two of the largest movie theater chains in the country, Cinemark USA, Inc. and the Regal Entertainment Group, agreed to dramatically improve the movie going experience for persons who use wheelchairs and their companions at stadium-style movie theaters across the United States. Both chains have agreed that all future construction at both theater chains will be designed in accordance with plans approved by the Department and barriers will be removed at certain existing theaters.

Project Civic Access ("PCA") is a wide-ranging initiative to ensure that towns and cities across America comply with the ADA. The goal of Project Civic Access is to ensure that people with disabilities have an equal opportunity to participate in civic life. To date, we have reached 151 agreements with 142 communities to make public programs and facilities accessible. Each of these communities has agreed to take specific steps, depending on local circumstances, to make core government functions more accessible to people with disabilities. These agreements quite literally open civic life up to participation by individuals with all sorts of disabilities. The agreements have improved access to many aspects of civic life, including courthouses, libraries, parks, sidewalks, and other facilities, and address a wide range of accessibility issues, such as employment, voting, law enforcement activities, domestic violence shelters, and emergency preparedness and response. During the past 6 years, we have obtained more than 80% of the agreements reached under Project Civic Access since it began in 1999, improving the lives of more than 3 million Americans with disabilities.

This fiscal year we have expanded our PCA focus to include emergency preparedness for people with disabilities. Our activities related to recovery from the hurricanes in the Gulf region in 2005 have included working with the Department of Housing and Urban Development ("HUD") to design specifications and floor plans that the Federal Emergency Management Agency ("FEMA") can use to procure and install fully accessible travel trailers and mobile homes. We also provided guidance to FEMA on constructing accessible ramps for trailers and mobile homes, trained FEMA's equal rights staff on best practices in addressing the emergency-related needs of people with disabilities, and began working with certain local governments to ensure that their emergency management plans appropriately address the needs of individuals with disabilities.

Under Executive Order 13347, Individuals with Disabilities in Emergency Preparedness, the Division is collaborating with the Department of Homeland Security's Office for Civil Rights and Civil Liberties in its emergency management and Gulf Coast rebuilding activities.

The Division continues to have great success with the Disability Rights Section's innovative ADA Mediation Program. Using more than 400 professional ADA-trained mediators throughout the United States, the ADA Mediation Program continues to expand the reach of the ADA at minimum expense to the government. It allows the Section quickly to respond to and resolve ADA complaints effectively, efficiently, and voluntarily, resulting in the elimination of barriers for people with disabilities throughout the United States. Since its inception, more than 2,500 complaints filed with the Department alleging violation of Title II and Title III have been referred to the program. Of the more than 1,900 mediations completed, 77% have been successful. This year's success rate climbed to 82%, our highest ever.

The Division promotes voluntary compliance with the ADA through a wide range of technical assistance and outreach efforts. I have personally attended meetings of our ADA Business Connection, a multifaceted initiative for businesses started by the Department in 2002. This initiative includes conducting a series of meetings between disability and business communities around the country, and producing publications on topics related to the ADA that are of particular interest to small businesses. In FY 2006, a series of dynamic ADA Business Connection Leadership meetings were held in four cities with more than 150 participants from small and mid-sized businesses, large corporations, and organizations of people with disabilities.

In addition to the Business Connection meetings, we also operate an ADA Information Line as well as an informative website. Our ADA Information Line receives over 100,000 calls annually from people seeking information and publications on the ADA. In FY 2006, over 45,000 calls to the ADA Information Line have been answered by ADA Specialists. Also, the Section's popular ADA Website, www.ada.gov, continues to be active. In Fiscal Year 2006, it served more than 3.1 million visitors who viewed the pages and images more than 49 million times, an increase in hits of over 30% over the prior year.

In addition to these outreach efforts, this year the Disability Rights Section sent a mailing to 25,000 state and local law enforcement agencies offering free ADA publications and videotapes developed specifically for law enforcement audiences. We also issued a revised and expanded guide for local governments on making emergency preparedness and response accessible for people with disabilities. Additionally, the Section has participated in more than 70 speaking and outreach events in FY 2006.

The Disability Rights Section publishes regulations to implement Title II and Title III of the ADA and serves as the Attorney General's liaison to the U.S. Architectural and Transportation Barriers Compliance Board ("Access Board"). During 2006, the Section continued to develop revised ADA regulations that will adopt updated design standards consistent with the revised ADA Accessibility Guidelines published by the Access Board in July 2004. The revised guidelines are the result of a multi-year effort to promote consistency among the many federal and state accessibility requirements. We are now drafting a proposed rule and developing the required regulatory impact analysis.

SPECIAL LITIGATION

The Division's Special Litigation Section has two core missions: Protecting the civil rights of institutionalized persons and promoting constitutional law enforcement.

The Civil Rights of Institutionalized Persons Act ("CRIPA") authorizes the Attorney General to investigate patterns or practices of violations of the federally protected rights of individuals in

state-owned or -operated institutions. These include nursing homes, facilities for those with mental illness and developmental disabilities, prisons, jails, and juvenile justice facilities. Our investigations focus on a myriad of issues, including abuse, medical and mental health care, fire safety, security, adequacy of treatment, and training and education for juveniles.

In Fiscal Year 2006 alone, the Division handled CRIPA matters and cases involving over 175 facilities in 34 states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. The Division continued its investigations of 77 facilities into 2006, and monitored the implementation of consent decrees, settlement agreements, memoranda of understanding, and court orders involving 99 facilities.

With regard to juvenile justice facilities, this Administration has increased the number of settlement agreements by more than 70%, has more than doubled the number of investigations, and has more than doubled the number of findings letters issued. One recent example of the Division's work regarding juvenile justice facilities is the successful resolution of our lawsuit against the state of Mississippi in connection with conditions of confinement at the Oakley and Columbia Training Schools in June 2005. The Division filed suit in December 2003 following an investigation that found evidence of shockingly abusive practices, including hogtying, pole-shackling, and placing suicidal students for extended periods of time into a "dark room," naked, with only a hole in the floor for a toilet. Children who became ill during strenuous physical exercise were made to eat their vomit. The consent decree requires the state to implement reform regarding protection from harm and use of force. We also separately entered into a settlement agreement with the state regarding mental health care and special education services. Since the settlement, we have made numerous monitoring visits to ensure that the principles of the settlement are effectuated. I personally visited a facility in August and while there, my staff received allegations and reviewed documents of staff abuse on youth and youth-on-youth violence.

The Division's important health care work is illustrated by a recent historic settlement with California involving four state mental health care facilities that provide inpatient psychiatric care to nearly 5,000 people committed civilly or in connection with criminal proceedings. The Division's investigation, which commenced in March 2002, initially involved one facility but ultimately expanded to include three others. Among other violations, we found a pattern and practice of preventable suicides and serious, life-threatening assaults by staff and other patients. In two instances, patients were murdered by other patients. The extensive reforms required by the consent decree, which was filed in court this summer, mandate that individuals in the hospitals are adequately protected from harm, are provided adequate services to support their recovery and mental health, and are served in the most integrated setting appropriate for their needs, consistent with the terms of any court-ordered confinement.

In FY 2006, the Division has aggressively pursued contempt actions against several recalcitrant jurisdictions to address their long-term failure to achieve compliance with agreed-upon settlement remedies. For example, in *United States v. Virgin Islands*, our inspections of the adult detention center revealed unsupervised housing units, inadequate medical and mental health care, and deplorable environmental conditions. As a result, the court granted the Division's motion to find the Virgin Islands in contempt of the court's previous orders and our consent decree addressing conditions at the detention center. Specifically, the court ordered the appointment of a special master to address ongoing violations of the constitutional rights of persons incarcerated at the facility.

In addition to its CRIPA work, the Special Litigation Section investigates patterns or practices of violations of federally protected rights by law enforcement agencies under Section 14141 of the 1994 Violent Crime Control and Law Enforcement Act.

The Division has ensured the integrity of law enforcement by more than tripling the number of settlements negotiated with police departments across the country since 2001. During this Administration, the Civil Rights Division has successfully resolved fourteen pattern or practice police misconduct investigations involving eleven law enforcement agencies, compared to only four investigations resolved by settlement during a comparable time period of the previous administration. Since 2001, the Division has opened more investigations (16 vs. 15) and filed more consent decrees (4 vs. 3) than in the preceding 6 years. We have issued, moreover, more than six times the numbers of technical assistance letters to police departments (19 vs. 3).

EMPLOYMENT DISCRIMINATION

The Civil Rights Division remains diligent in combating employment discrimination, one of the Division's most long-standing obligations. Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Most allegations of employment discrimination are made against private employers. Those claims are investigated and potentially litigated by the Equal Employment Opportunity Commission ("EEOC"). However, the Civil Rights Division's Employment Litigation Section is responsible for one vital aspect of Title VII enforcement: Discrimination by public employers. Pursuant to Section 707 of Title VII, the Attorney General has authority to bring suit against a state or local government employer where there is reason to believe that a "pattern or practice" of discrimination exists. These cases are factually and legally complex, as well as time-consuming and resource-intensive. In Fiscal Year 2006, we filed three complaints alleging a pattern or practice of employment discrimination.

In *United States v. City of Virginia Beach* and *United States v. City of Chesapeake*, the Division alleged that the cities had violated Section 707 by screening applicants for entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. In Virginia Beach, the parties reached a consent decree providing that the city will use the test as one component of its written examination, and not as a separate pass/fail screening mechanism with its own cutoff score. The City of Chesapeake litigation is ongoing. In *United States v. Southern Illinois University*, the Division challenged under Title VII three paid graduate fellowship programs that were open only to students who were either of a specified race or national origin or who were female. While denying that it violated Title VII, the University admitted that it limited eligibility for and participation in the paid fellowship programs on the basis of race and sex. The case was resolved by a consent decree approved by the court on February 9, 2006.

Additionally, during Fiscal Year 2006, the Section resolved liability or relief issues in eight pattern or practice lawsuits. Six of these cases involved consent decrees that were filed in Fiscal Year 2006, and two involved cases in which consent decrees were filed in Fiscal Year 2005. One example is a pattern or practice case the Division brought against the Ohio Environmental Protection Agency. We reached a consent decree on September 5, 2006, that accommodated employees with religious objections to supporting the public employees' union. The consent decree permits objecting employees to direct their union fees to charity.

The Division also has enforcement responsibility for the Uniformed Service Employment and Reemployment Rights Act of 1994 ("USERRA"). USERRA was enacted to protect veterans of the armed services when they seek to resume the job they left to serve their country. USERRA

enables those who serve their country to return to their civilian positions with the seniority, status, rate of pay, health benefits, and pension benefits they would have received if they had worked continuously for their employer. The Division filed four USERRA complaints in federal district court and resolved six cases this year.

During Fiscal Year 2006, we filed the first USERRA class action complaint ever filed by the United States. The original class action complaint, which was filed on behalf of the individual plaintiffs we represent, charges that American Airlines ("AA") violated USERRA by denying three pilots and a putative class of other pilots employment benefits during their military service. Specifically, the complaint alleges that AA conducted an audit of the leave taken for military service by AA pilots in 2001 and, based on the results of the audit, reduced the employment benefits of its pilots who had taken military leave, while not reducing the same benefits of its pilots who had taken similar types of non-military leave. Other examples of recent USERRA suits include *Richard White v. S.O.G. Specialty Knives*, in which a reservist's employer terminated him on the very day that the reservist gave notice of being called to active duty. We resolved this case through a consent decree that resulted in a monetary payment to the reservist. In *McCullough v. City of Independence, Missouri*, the Division filed suit on behalf of Wesley McCullough, whose employer allegedly disciplined him for failing to submit "written" orders to obtain military leave. We entered into a consent decree in which the employer agreed to rescind the discipline and provide Mr. McCullough payment for the time he was suspended. The employer also agreed to amend its policies to allow for verbal notice of military service. The Division has proactively sought to provide information to members of the military about their rights under USERRA and other laws. We recently launched a Website for service members (www.servicemembers.gov) explaining their rights under USERRA, the Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA"), and the Servicemembers' Civil Relief Act ("SCRA").

EQUAL EDUCATIONAL OPPORTUNITIES

The Division continues its important work of ensuring that equal educational opportunities are available on a non-discriminatory basis. The Division currently has hundreds of open desegregation matters, some of which are many decades old. The majority of these cases had been inactive for years, yet each represents an unfulfilled mandate to root out the vestiges of de jure segregation to the extent practicable and to return control of constitutionally compliant public school systems to responsible local officials.

To ensure that districts comply with their obligations, the Division actively reviews open desegregation cases to monitor issues such as student assignment, faculty assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources. In FY 2006, the Educational Opportunities Section initiated 38 new case reviews to determine whether districts have met their desegregation obligations, our second highest total to date for any fiscal year. For those districts that have achieved unitary status, we join in the school districts' motions to dismiss the case. For those districts that have not met their obligations, the Section works with the district to put it on the path to unitary status. This year, we identified 14 cases in which additional relief was needed.

Based upon these efforts, in FY 2006, the Division resolved *United States v. Covington County, Mississippi*. This is a district that operated under desegregation orders entered by a court in 1970 and 1975. The case review process revealed that although the majority of students district-wide are African-American, the largest school maintained in the district was virtually all-white. The consent decree desegregated the schools, which resulted in reduced transportation times for

many students, and provided enrichment programs for one school that could not be easily desegregated.

We are also actively seeking relief in districts such as McComb, Mississippi, where we are opposing segregated classroom assignments. The Division worked to address other issues in education during FY 2006, including inter-district student transfers. In Alabama, the Division entered into a statewide consent decree which addresses desegregation with respect to the construction of school facilities.

The Educational Opportunities Section is also achieving results for persons with disabilities in the education setting. In Fiscal Year 2006, the Section successfully defended the Department of Education's regulation interpreting the "stay put" provision of the Individuals With Disabilities Education Act in a case involving the State of Virginia and a local school district. The Section also successfully defended the Equal Education Opportunities Act from an attack by the state of Texas, which alleged that Congress did not properly abrogate the state's immunity from suit.

PROTECTING CIVIL RIGHTS AT THE APPELLATE LEVEL

During Fiscal Year 2006, the Division's Appellate Section filed 144 briefs and substantive papers in the United States Supreme Court, the courts of appeals, and the district courts. Eighty-seven of these filings were appellate briefs for the Office of Immigration Litigation ("OIL"). Excluding OIL decisions, 90% of the decisions reaching the merits were in full or partial accord with the Division's contentions. The Supreme Court reached the merits in five cases; all were consistent with the government's positions. The courts of appeals rendered 31 merits decisions, 87% of which were in full or partial accord with the Division's contentions. The district courts rendered three decisions; all were consistent with the government's positions. In Fiscal Year 2006, the Division filed 16 amicus briefs, an increase over the previous two years, bringing the total number of amicus briefs filed during this Administration to 94.

I would like to highlight two cases that the Appellate Section handled this past year - one in the Supreme Court and two in the Courts of Appeals.

In the United States Court of Appeals for Fourth Circuit, the Appellate Section filed a brief defending the Division's a criminal conviction obtained by the Division in *United States v. Hobbs and Kratzer*. In this case, the defendants were convicted of violating 18 U.S.C. § 241 after they and others agreed to hang a noose, burn a cross, and throw a dead raccoon on the property of an African-American family that had recently moved into the previously all-white town of Nine Mile in Richlands, North Carolina. They were each sentenced to 21 months' imprisonment. The defendants appealed, and the Appellate Section filed a brief defending the convictions. The Fourth Circuit issued a decision affirming the convictions.

In *Wisconsin Community Servs. v. City of Milwaukee*, the Division filed an amicus brief at the en banc level in the Seventh Circuit at the Court's invitation. In that case, the Plaintiff, which operates an outpatient clinic for persons with mental-health problems, tried to move its operations to a larger building in a business zone. The City denied plaintiff's request for a special-use permit to operate in the new location. The district court held that the City had an obligation under Title II of the Americans With Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act to make a reasonable accommodation in its zoning rules to allow plaintiff to open the clinic in the business zone. A divided panel of the Seventh Circuit vacated that decision and remanded for further proceedings. On rehearing en banc, the Seventh Circuit overturned the district court's decision and remanded for further proceedings, but rejected some of the panel's reasoning. The en banc Court agreed with the Division's positions on a number of key points. Most significantly, the Seventh Circuit agreed with the Division that the Title II regulation, 28

C.F.R. § 35.130(b)(7), "makes clear that the duty to accommodate is an independent basis of liability under the ADA," and thus "a plaintiff need not allege either disparate treatment or disparate impact in order to state a reasonable accommodation claim under Title II of the ADA." Judge Easterbrook, the author of the panel opinion, explained in a concurrence that he had changed his mind on this issue and now "accept[s] the Civil Rights Division's reading of this regulation."

PROTECTION OF IMMIGRANTS' EMPLOYMENT RIGHTS

From our country's inception, we have been a nation built by immigrants who have continually come to America seeking new and better opportunities. This is still the case today, as new and recent immigrants make up a significant portion of the labor pool. Yet often, individuals who are work-authorized immigrants, naturalized U.S. citizens, or native-born U.S. citizens face workplace discrimination because they might look or sound "foreign."

This is where the Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") takes action. OSC enforces the anti-discrimination provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), which protects lawful work