Prepared Statement
of
R. Alexander Acosta
Assistant Attorney General for the Civil Rights Division
Department of Justice

Submitted to the
House Committee on the Judiciary, Subcommittee on the Constitution

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

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

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

- Achieved its highest success rate ever in the courts of appeal;
- Prosecuted 96 new criminal civil rights cases, in conjunction with the United States Attorneys' Offices, the most ever filed in a single year;
- Assembled a task force to investigate the 1955 murder of Emmett Till;
- Prosecuted, in conjunction with the U.S. Attorneys' Offices, 59 new defendants for human trafficking violations, a dramatic increase from the 5 prosecuted in 2000;
- Mounted the largest election monitoring program in the Division's history; dispatching over 1,900 federal personnel to monitor elections around the country;
- Filed and successfully resolved as many language minority ballot access cases as the Division had filed in the previous 8 years combined;
- Implemented vigorous enforcement of the Help America Vote Act;
- Increased by 85% the number of lawsuits challenging a pattern or practice of discrimination in housing;
- Won the largest jury verdict ever obtained by the Division in a Fair Housing Act case;

- Brought, for the first time ever, multiple fair lending "redlining" cases in the same year, including – in another first – claims that a bank failed to make business loans on a non-discriminatory basis;

- Brought and successfully resolved a lawsuit challenging allegations of discrimination in public accommodations by Cracker Barrel Old Country Stores;

- Filed more cases challenging a pattern or practice of employment discrimination that in any year since the mid-1990s;

- Concluded the 100th agreement under Project Civic Access, promoting accessibility in municipal services and facilities;

- Filed and resolved a landmark design and construction suit under the FHA and ADA that covers over 4,000 ground units and affects 34 apartment complexes in 6 states;

- Settled the Division's first case against a public housing authority to enforce HUD's Rehabilitation Act regulations, providing more than 2,000 new housing opportunities for individuals with disabilities;

- Received more than 30 million hits – the most ever – on its ADA homepage, which ranks among the most used federal compliance assistance websites;

- Served more than 100,000 callers on its ADA Information Hotline, including 48,000 who were personally assisted by specialists;

- Brought the first Title IV education case since 1990;

- Authorized 14 new Civil Rights of Institutionalized Persons Act investigations and entered into 15 CRIPA agreements, the most agreements reached ever in a single year in; and

- Filed the Division's first contested lawsuit to protect the rights of juveniles in state institutions since the early 1990s.

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

FEDERAL CRIMINAL LAW

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

Color of Law Prosecutions

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

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

I want to highlight three examples for the Committee:

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

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

In *United States v. Simmons,* the defendant used his status as a police officer to sexually assault a helpless teenage victim. After pulling over the victim and her boyfriend for a traffic

offense, the defendant placed the victim in his patrol car and offered to drive her home. Instead he took her to a secluded area where he repeatedly raped her. Our involvement and investigation followed an unsuccessful state prosecution. Just earlier this month, a federal jury convicted the defendant, specifically finding that he had committed aggravated sexual abuse and caused bodily injury to the victim.

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

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

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

Bias Motivated Crimes

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

angered that the victim was with a white woman, stabbed a black man in a Springfield, Missouri restaurant.

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

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

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

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

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

Trafficking in Persons

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

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

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

The majority of our trafficking cases, however, involve some form of sexual abuse. For example, in *United States v. Carreto*, seven defendants are currently facing charges in a sex trafficking conspiracy. The defendants allegedly organized and operated a trafficking ring that smuggled nine Mexican women into the United States illegally and forced them into prostitution in Queens and Brooklyn, New York. One defendant has already pleaded guilty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROTECTING VOTING RIGHTS

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

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

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

Nothing so acutely focuses attention on voting rights as a national election. Such an election requires early and substantial planning on the part of the Division to ensure that it properly carries out its mandate to enforce the several statutes entrusted to it. Accordingly, starting in April 2004, I met with my voting rights leadership team to establish broad goals for the Division's effort. The Division's subsequent efforts, set in motion at that time, fall generally into three categories: monitoring, transparency, and legal accountability.

Election Monitoring Under the Voting Rights Act

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

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

First, the Voting Rights Act provides for the appointment of federal voting observers by order of a federal court pursuant to Section 3(a), or, with regard to political subdivisions covered under Section 4 of the Voting Rights Act, upon the certification by the Attorney General,

pursuant to Section 6[1]. In addition, Section 8 of the Voting Rights Act provides for the appointment of federal observers within political subdivisions certified by the Attorney General or by order of a federal court pursuant to Section 3 of the Voting Rights Act.

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

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

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

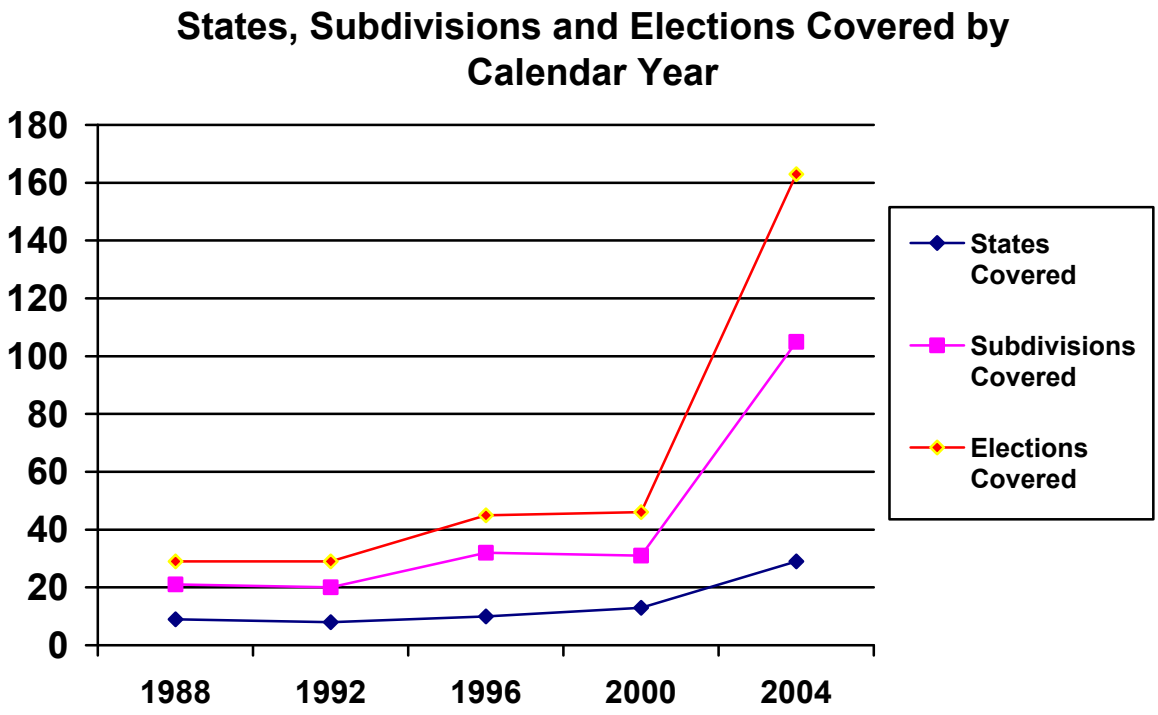
All monitors received substantial training in election-related civil rights laws, including, for the first time ever, those laws designed to protect the rights of voters with disabilities. The Division likewise worked with OPM to ensure quality training of OPM election observers.

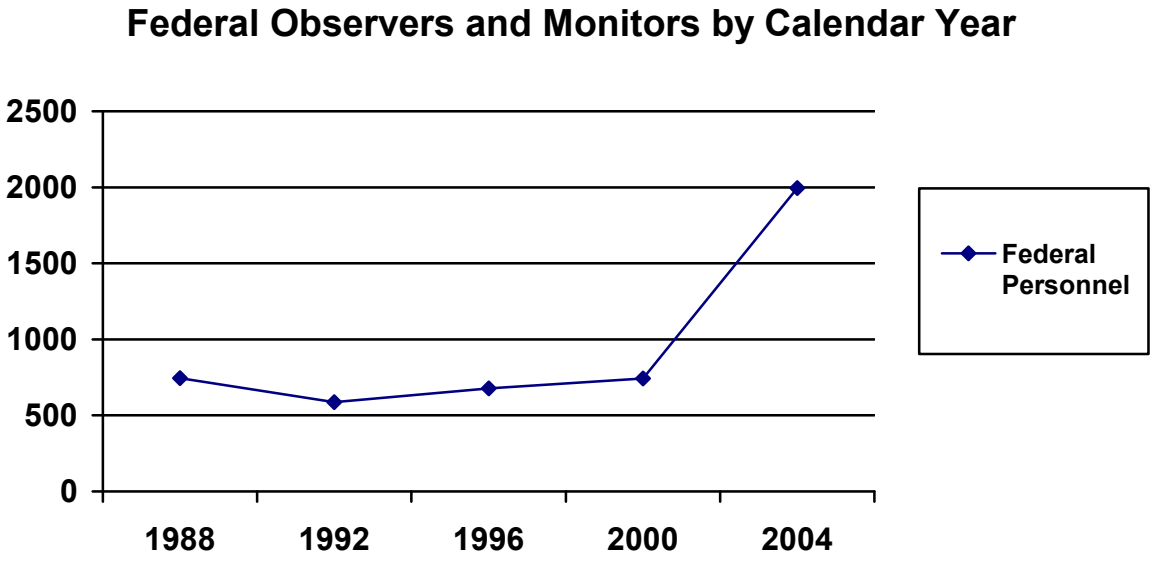
Election monitoring in 2004 began with the early primary elections and proceeded throughout the year. Prior to the general election, the Department sent 802 monitors and observers to 75 elections in 20 states, as compared with 340 monitors and observers deployed to 21 elections in 11 states pre-election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

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

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

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





Importance of Transparency

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

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

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

On May 4, 2004, Division leadership met with representatives of many civil rights and voting-related organizations. During that meeting, I presented in detail the Division's plans for preparing for the general election. This included a lengthy explanation of the process by which we would select jurisdictions to be monitored. Moreover, we distributed guidance on how to request monitoring for a jurisdiction, along with the information necessary to substantiate such requests. In addition to meeting with the Division, leading civil rights groups' leaders were also invited to make a presentation at the Attorney General's Ballot Access and Voting Integrity Symposium in July 2004. This Symposium was designed to train Department of Justice personnel on the work both of the Civil Rights Division and the Criminal Division.

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

Law Enforcement & Local Accountability

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

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

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

During 2004, we established record levels of protection for minority language voters under Section 203 of the Voting Rights Act. Section 203 provides that all "election materials and information" available in English must also be available in the applicable minority language for

those who need it. This includes ballots, instructions and other materials. Often, jurisdictions even provide bilingual pollworkers to assist voters. The statute is designed to ensure that citizens not only have the opportunity to vote, but also to ensure that they cast an informed and knowing vote.

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

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

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

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

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

Election Official Accountability – The Help America Vote Act

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

During 2004, we filed the Division's first lawsuits to enforce HAVA, against San Benito County, CA and Westchester County, NY. Both suits were over the counties' lack of compliance with HAVA because poll officials failed to post the required voter information. San Benito County also failed to have a system for provisional voters to find out whether their ballots were accepted and counted. Consent agreements have been reached in both cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Election Day Activities

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

Complaint Gathering and Review

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

The vast majority of these matters were resolved almost immediately. For example, in response to intimidation concerns, we worked out protocols with sheriffs in Duval and Broward

Counties, Florida to minimize a visible police presence at or near polling places. We also met with political party/campaign leaders in both camps to discuss the appropriate circumstances for challenging voters. Challenges thereafter were few and far between. We also looked into fears of possible racial unrest in Arizona, resulting in part from the presence of Proposition 200 on the ballot. As a result of our inquiries, election officials coordinated with law enforcement to develop contingency plans to respond to any Election Day armed intimidation.

We also monitored, *inter alia*, allegations of improper felon purges, allegations of law enforcement intimidation of voters, unequal distribution of voting locations and machines, improper efforts to disrupt or intimidate legitimate poll watching activities, improper demands for identification, improper voter challenges, and improper maintenance of voting rolls. As might be expected, many of these reports turned out to be less than reported, the result of rumor and suspicion. But, wherever allegations bore fruit we fully and diligently investigated.

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

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

Administrative Preparations

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

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

A few examples of matters resolved quickly by telephone include:

- An 18-year old in Louisiana told that she could not vote for President – we resolved the matter with election officials;

- Poll workers in Illinois using racially derogatory language towards voters of middle-eastern descent – we resolved the matter with election officials;

- Reports of difficulties properly distributing and segregating provisional ballots – we advised election officials as to the applicable requirements of HAVA; and,

- Reports that individuals in line at the time polls closed would not be permitted to vote – we confirmed with local officials that everyone in line at that time would be permitted to vote;

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

Election Monitoring Program Performance

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

In short, during 2004, the Civil Rights Division mounted its most extensive election protection effort in its history, and accomplished much of which to be proud. Looking forward, the coming year should see a focus on more traditional voting rights matters. We recently assembled a team of attorneys to look at Section 2 matters. We have already filed one lawsuit under Section 2 this year against Noxubee County, Mississippi, and we are considering the potential for investigation in about half a dozen other jurisdictions. In response to the Supreme Court's decision in *Georgia v. Ashcroft*, we have updated our analytical framework for Section 5 analysis of redistricting plans, having vigorously litigated the *Georgia* case on remand before the case was dismissed prior to trial. And, with respect to HAVA, we are now looking forward to assisting States in the run-up to January 1, 2006, when the balance of its requirements take effect.

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

- 1.5 million people cast provisional ballots.

- Over 1 million provisional votes were counted (68%).

- 17 states used provisional ballots for the first time.

- Since 2000, at least 25% of voters have used new voting equipment, with another 30% to be using new equipment by 2006.

- At least nine states had developed and used a statewide voter registration database to help increase access to the polls.

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

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

HOUSING AND CIVIL ENFORCEMENT

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

Indeed, as President Bush recently noted:

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

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

Fair Housing

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

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

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

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

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

Discrimination is not limited to the basis of race. Consider, for example, the facts of a case we took to trial: *United States* v. *Veal*. We alleged a pattern or practice of discrimination by the defendant landlords, who systematically sought sexual favors from female tenants. One of the victims was 19 years old and living in her car with her two children when she moved into the top

floor of a duplex owned by the defendants. On two separate occasions, one defendant came to her house, let himself in unannounced, and forced her to have sex with him on her bed. After these incidences, she used the medicine she was receiving to treat her sickle cell disease to try to kill herself. Another victim was homeless and living in her car, separated from her children, when she rented a home from the Veal's. After resisting several incidents where a defendant fondled her and refused to stop, the victim considered committing suicide to escape the harassment. In this case we secured a jury award of $1.1 million, the largest FHA award in the Division's history.

Fair Lending

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

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

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

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

Public Accommodations & Equal Land Use

Last year also saw the Division successfully bring a lawsuit against Cracker Barrel restaurants that alleged a pattern or practice of racial discrimination in a public accommodation,

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

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

EMPLOYMENT DISCRIMINATION

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

Section 706 – Individual Allegations of Employment Discrimination

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

These included several extremely significant actions:

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

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

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

Section 707 – Pattern or Practice Cases

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

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

At trial, the Department submitted the names of 97 African-Americans who failed the test but who nevertheless obtained law enforcement certification and employment elsewhere - including the United States Secret Service and police agencies in Delaware, Maryland, New Jersey and Pennsylvania. On March 22, 2004, the court issued a decision agreeing with our position and concluding that the State Police had set the cut score for the challenged examination "at an impermissibly high level" and, accordingly, determined that the State Police's use of the

examination violated Title VII. We are currently in negotiations with the State to attempt to resolve liability issues without having to resort to further contested litigation.

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

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

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

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

Uniformed Service-members Employment Rights and Restoration Act

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

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

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

Discrimination against Immigrants

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

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

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

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

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

DISABILITY RIGHTS AND THE NEW FREEDOM INITIATIVE

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

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

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

That is the simple truth of our work in the disability area. Without simple modifications such as curb cuts, many Americans with disabilities are quite literally prisoners in their own homes. The New Freedom Initiative changes that. Furthering this goal, during 2004 we successfully concluded 39 Project Civic Access Agreements, the most of any year since the Project began.

Disability Rights Litigation

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

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

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

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

million fund to compensate individuals who were injured by the inaccessible housing, and for a $30,000 civil penalty to the United States.

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

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

Voluntary Compliance & Technical Assistance Programs

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

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

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

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

this year our election monitors were trained in accessibility laws as well as more traditional voting rights protections).

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

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

ADA Rulemaking

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

EQUAL EDUCATIONAL OPPORTUNITIES

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

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

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

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

Of the Division's active desegregation matters, the most visible this past year was the new consent order secured in *United States v. Chicago Board of Education*, which addressed the school district's failure to comply with an earlier agreement. The comprehensive decree addressed a variety of subjects in the third largest school district in the country, which enrolls over 440,000 students in 600 schools. Among the areas addressed are student and faculty assignment, and remedial educational programs and funding. As a result of this agreement – and our vigorous enforcement of it – minority students were given the choice to transfer to better performing schools. One student who took advantage of this option told the Chicago Tribune the difference it made in his life. At his old school, he said, "kids walk up to you and say, `What's up? Give me your money,'" at his new school they say, "Hi, Terrance. How are you doing?" The consent decree also addresses the district's failure to appropriately fund certain majority-minority schools, and to provide appropriate services to English Language Learners.

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

Our work in *Hearn v. Muskogee School District* also drew national attention. There we helped Nashala Hearn, a young Muslim girl, who was denied the right to wear a religious headscarf – a "hijab" – to class. Rather than embrace the opportunity to educate children regarding other cultures and religions, school officials expressed concern that children would fear the hijab, and thus suspended Nashala until she removed it. We negotiated a consent decree that permitted Nashala to wear the hijab and modified the district's policy with respect to the dress code as it relates to possible discrimination on the basis of religion. After we prevailed,

this brave young girl traveled to Washington where she testified before the Senate Judiciary Committee. "My friends can wear their crosses to school," she told the Committee. "Why can't I wear my hijab?" A good question indeed.

LIMITED ENGLISH PROFICIENCY

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

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

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

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

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

During the conference, we released an important LEP resource document entitled "Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field."

This document provides lessons from the experiences of law enforcement, 911 centers, domestic violence providers, courts, and DOJ components on meaningful access. Although geared to these entities, the general section of the document contains useful tips and tools for any entity trying to provide language access. We developed the document over many months of research to gather useful practices from throughout the country. It is now available on the LEP website, www.lep.gov.

SPECIAL LITIGATION: CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

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

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

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

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

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

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

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

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

SPECIAL LITIGATION: PROMOTING CONSTITUTIONAL LAW ENFORCEMENT

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

When I appeared before the Committee last year I explained the new approach we have crafted to such cases. Rather than adopting a purely litigation-driven enforcement model, our experience demonstrates that a cooperative model produces much better and faster results. Accordingly, rather than husband findings of potential violations for use in court, we work hard to keep target agencies informed of our findings and progress, so that they can begin to develop

and implement effective solutions. Local police agencies are fully the Division's partner in developing constitutional norms for policing. By including them in the process, local agencies are more likely to "buy in" to the solution, making lasting change more likely.

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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