S. HRG. 110–433

CONFIRMATION HEARING ON THE NOMINATION OF GRACE C. BECKER TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MARCH 11, 2008

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NOMINATION OF GRACE C. BECKER, OF NEW YORK, TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

TUESDAY, MARCH 11, 2008

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:42 p.m., in room SD–106, Dirksen Senate Office Building, Hon. Edward M. Kennedy, presiding.

Present: Senators Feingold, Schumer, Cardin, Whitehouse, Specter, and Hatch. Also present: Grace C. Becker.

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Good afternoon. The Committee will come to order. Thank you for your patience here this afternoon.

Ms. Becker, good afternoon, and welcome to the Committee. You've been nominated to head the Civil Rights Division. The Division is one of the most importance agencies in the Federal Government. It serves as the government's public and private voice on civil rights. Its historic mission has been to protect the civil rights of all Americans, especially those who are the most vulnerable, and help our Nation live up to our ideals of opportunity and justice for all.

Fifty years ago, the Division was created to provide more rigorous protection of civil rights. Since then, Justice Department lawyers have been in the forefront of civil rights struggles. The Division was at the forefront of battles to desegregate schools and open the doors of opportunity to all children; it led the charge to protect voting rights and fair housing, and to break down the glass ceilings that unfairly limit opportunities in workplaces for women, minorities, and persons with disabilities.

Today's civil rights challenges are difference from those of the past. New forms of discrimination replace the "Whites Only" signs of the past. We know that civil rights are still the unfinished business of America and if we are not vigilant we will lose ground, so there is a need for a strong Civil Rights Division to continue the progress that we have been making.

Unfortunately, in this administration the Division has failed to live up to its historic role. The Division that helped bring Jim Crow to his knees has now backed away from fully enforcing civil rights.

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Press reports and congressional oversight hearings on the Division have shown that in recent years politics has often dictated outcomes and civil rights enforcement suffered.

Equally disturbing, the Division's political leaders supplied political tests to career professionals and let partisan considerations affect personal decisions ranging from hiring to case assignments and evaluation. Much of this conduct is still under investigation by the Inspector General in the Office of Professional Responsibility.

The next Attorney General for Civil Rights will need to restore the Division's tarnished image and reassure the American people that their civil rights are being fully and fairly protected. The public must be confident that politics no longer trumps law enforcement and that the Division has the strong leadership needed to correct the recent problems. I look forward to today's hearing and to your testimony on these important issues.

Ms. Becker, as the Acting Assistant Attorney General for Civil Rights, you previously served from 2006–2007 as the Deputy Attorney General in the Division of an Associate Deputy General Counsel for the Department of Defense. She is an alumnae of this Committee and served as counsel to Senator Hatch from 2003 to 2005, and we welcome Senator Hatch here this afternoon. She has also been an Assistant General Counsel of the U.S. Sentencing Commission and an attorney in the Criminal Division of the Department of Justice.

We will hear from Senator Specter, and then we will welcome any comments from our friend and colleague and Committee member, Senator Hatch, before we hear from the witness.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I join the Chairman in welcoming you here, Ms. Grace Chung Becker. You come to this nomination with outstanding academic and professional background. I note you are a magna cum laude graduate of the University of Pennsylvania, a very fine school. I have a little knowledge as to what it takes to be magna cum laude there. Magna also from Georgetown University Law Center. You clerked for two very distinguished Federal judges. You had extensive experience in the Department of Justice, and as previously noted, working in the Civil Rights Division as Deputy Assistant Attorney General and Acting Assistant Attorney General.

As a member of a minority yourself, I think you have some special insights into the issues and into the problems. There is no doubt about the tremendous importance of the Civil Rights Division. As that Division has moved from one form of discrimination to another, it requires a great deal of vigilance and is a very, very important department.

I would ask unanimous consent that a statement by Senator John Warner be included in the record, and look forward to your testimony.

Senator KENNEDY. It will be so included, and a statement of Senator Leahy.

[The prepared statements of Senator Warner and Senator Leahy appear as submissions for the record.]

Senator KENNEDY. Ms. Becker, are you sure you want Senator Hatch to introduce you?

[Laughter.]

Ms. BECKER. I proudly sit next to Senator Hatch.

Senator KENNEDY. We welcome friend and colleague Senator Hatch. We are delighted to hear from you.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman.

Grace, I have to say that you have two of the finest advocates of civil rights in the history of this country who are chairing and Ranking Member on this Committee today. I have such tremendous respect for them.

But first of all, let me thank Senator Leahy, the Judiciary Committee Chairman, for scheduling this hearing, as well as you, Senator Kennedy, for taking time to chair the hearing, and my dear friend as well, Senator Specter.

I am proud to introduce to the Committee Grace Chung Becker, an outstanding nominee to be Assistant Attorney General for Civil Rights. I will take just a few minutes to introduce her, both professionally and personally.

Grace is currently the Acting Assistant Attorney General, as has been said, for Civil Rights and has helped to lead the Civil Rights Division since 2006, first as a Deputy Assistant Attorney General. She received her B.A. from the University of Pennsylvania and her B.S. from the Wharton School of Finance, each of them magna cum laude. She received her J.D. from Georgetown, where she was elected to the Order of the Coif, which is the highest honor you can get in law school. By the way, she also received that degree magna cum laude.

I think I see a pattern here. With the exception of 1 year as an associate with the well-known law firm of Williams & Connelly, Grace has spent her career in public service in all three branches of government. She clerked for U.S. District Judge Thomas Penfield Jackson and U.S. Circuit Judge James Buckley, both here in the District of Columbia. Grace has served in the Department of Justice as a trial attorney in the Criminal Division, as Special Assistant U.S. Attorney, and as Deputy Assistant Attorney General. Her executive branch tenure also includes serving as Associate General Counsel at the Department of Defense. Before returning to the Justice Department, Grace served for 6 years as Assistant General Counsel for the U.S. Sentencing Commission, as has been mentioned.

It was during that period that she was detailed here to the Senate Judiciary Committee, where she served as counsel when I chaired the Committee during the 108th Congress. I believe that 15 current members of the Committee were here at that time and will no doubt remember Grace's excellent work and dedication.

So, Mr. Chairman, Grace has served in all three branches of the Federal Government and already has extensive experience with the Department of Justice, including service in the very position to which she has been nominated.

Turning from the professional to the personal, Grace was born in New York City, the first person in her family to be born in the United States. Her parents, both naturalized American citizens, and Grace's three siblings are all entrepreneurs in the New York/New Jersey area. I understand that her extended family is here to support her today.

Grace's parents showed her the importance of hard work by their consistent example, and she followed their advice that education is critical to success. As a result, Grace is living the American dream and reaping the fruit of character, hard work, education, and integrity. She and her husband Brian have been married since 1994 and they have two children, who are also here today.

Grace is also then proud of her Korean heritage, and has served on the Board of Korean-American Coalition, and on the Fairfax County School Board's Human Rights Advisory Committee.

Finally, Mr. Chairman, let me add a more personal word. I have personally been blessed, during my 31 years in this body, to have had many able, smart, and dedicated staff. But I want to say, with no disrespect intended for anyone else, that Grace is one of the best. Her energy, intelligence, integrity, and the quality of her character led me to really rely on her and to trust her judgment when she worked on my staff. Her work here in the Senate truly enhanced the quality of her service to the American people.

Personally, I was sad to see her leave here, but confident that she would bring the same qualities to the Department of Justice. She certainly has not disappointed me. I know that the Department of Justice in general, and the Civil Rights Division in particular, have generated some controversy in the last 2 years. I hope that, as we move to approve new leadership there, we can focus on the fine person before us.

I have no doubt that anyone who looks at her considerable merit will see that all Americans are fortunate to have her in this position. Her background, education, experience, and character make this one of President Bush's best appointments. So I hope that we can complete the confirmation process and give her the unanimous vote of confidence that she deserves.

Mr. Chairman, this is a really fine person. I have never seen an instance where she was not acting in the best interests of our country and doing the best of her abilities, which are, as you can easily see, very considerable. So I am very proud to sit by you, Grace, and to recommend you to this Committee, and especially to these two leaders who, as I have said before, are two of the greatest leaders in the history of the Congress on civil rights.

I thank you, Mr. Chairman, for granting me this time.

Senator KENNEDY. Ms. Becker, would you be good enough to stand and raise your right hand?

[Whereupon, the nominee was duly sworn.]

Senator KENNEDY. Thank you very much. Congratulations.

I have been troubled by the numerous reports in recent years that partisan politics has infected the personnel decisions in the Civil Rights Division. Bradley Schlossman, a former official in the Division, told the Committee that he bragged about hiring Republicans. He also tried to transfer three minority women out of the Appellate Section involuntarily because he felt they were too lib-

eral. Even though all of them had served successfully for years, he said he wanted to replace them with "good Americans".

A Deputy Chief of the Voting Section who had served with distinction in the Department for 25 years was transferred involuntarily to a dead-end training job after he and other career attorneys recommended raising a Voting Rights Act objection to a Georgia photo ID law that had been pushed through by State Republicans. The law was later blocked by the courts, which compared it to a poll tax.

I will withhold here. Would you like to introduce your family?

STATEMENT OF GRACE CHUNG BECKER OF NEW YORK, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Ms. BECKER. I welcome the opportunity.

Senator KENNEDY. All right. Please.

Ms. BECKER. Thank you very much, Senator Kennedy. I have today behind me, and I guess slightly to your left, my husband, Brian Becker and our two children, my daughter, Kira Becker, who is 10 years old, and my son, Scott Becker, who is 7 years old.

Senator KENNEDY. Are they missing school today?

Ms. BECKER. They went for half a day and they are both missing a few teeth, though, of relative recent vintage.

[Laughter.]

On the other side of them is my mother, Judith Chung.

Senator KENNEDY. Good.

Ms. BECKER. Over here to your right is my father, Hai Joon Chung.

Senator KENNEDY. Fine.

Ms. BECKER. My brother, David Chung, his son, my nephew, Peter Chung. And then in the second row is my brother David's wife, Erica Chung. Then my cousin, Karen Becker, is also in the second row. Then on the back, going across on this side is my niece, Sun A Yoon, and a dear family friend who has really been like an uncle to me, Lak Moon Chung.

Senator KENNEDY. Very good. You are all very welcome. Should we get the coloring books out?

[Laughter.]

Smart young people here. Very good.

Is there any comment that you would like to make at the start?

Ms. BECKER. Just to thank the President and the Attorney General for the nomination and support, and to thank my family members for all of their personal and financial sacrifices so that I could be here today, sir.

[The biographical information of Ms. Becker follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Grace Young Chung Becker
   Grace Young Chung (maiden name)
   Grace Chung Becker

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General for the Civil Rights Division, Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   U.S. Department of Justice
   Civil Rights Division
   950 Pennsylvania Avenue, N.W., Suite 5643
   Washington, DC 20530

   Residence: Falls Church, VA

4. **Birthplace**: State date and place of birth.

   DOB: 1969; New York, NY

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Brian Charles Becker
   Economist
   Precision Economics, LLC
   1901 Pennsylvania Avenue, N.W., Suite 200
   Washington, DC 20006

   Dependent Children: 2

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Georgetown University Law Center, J.D. 1994 (dates of attendance: 1991-1994)
   University of Pennsylvania – (dates of attendance: 1987-1991)
   College of Arts and Sciences, B.A. 1991
   The Wharton School, B.S.E. (Bachelor of Science in Economics) 1991

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Columbia University, Summer 1988 - no degree received
Ewha Women's University, Summer 1987 – no degree received
Harvard University, Secondary School Program, Summer 1986 – no degree received

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

12/07-present: U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW, Suite 5643
Washington, DC 20530
Acting Assistant Attorney General

03/06-12/07: U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW, Suite 5643
Washington, DC 20530
Deputy Assistant Attorney General

04/05-03/06: U.S. Department of Defense, General Counsel's Office
1600 Defense Pentagon
Washington, DC 20301-1600
Associate Deputy General Counsel

01/05-03/06: Korean-American Coalition (DC Area Chapter)
Board of Directors

10/99-04/05: U.S. Sentencing Commission
1 Columbus Circle, N.E., Suite 2-500 South Lobby
Washington, DC 20002
Assistant General Counsel

06/03-04/05: U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510
Counsel (Detailee)

01/01-12/01: Korean-American Coalition (DC Area Chapter)
Board of Directors; Executive Vice President

01/00-01/01: U.S. Army
Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs)
The Pentagon, Room 2E468
Washington DC 20310
Special Advisor to the Assistant Secretary of the Army on No Gun Ri (Detailee)

09/97-10/99: U.S. Department of Justice

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Criminal Division
Narcotic & Dangerous Drug Section
1400 New York Avenue, NW
Washington, DC 20005
Trial Attorney

11/98-10/99: U.S. Attorney's Office, Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
Special Assistant United States Attorney (Detailee)

08/96-09/97: U.S. Court of Appeals for the District of Columbia Circuit
Chambers of the Honorable James L. Buckley
333 Constitution Avenue, N.W.
Washington, DC 20001
Law Clerk

10/95-07/96: Williams and Connolly, LLP
725 12th Street, N.W.
Washington, DC 20005
Associate.

08/94-09/95: U.S. District Court for the District of Columbia
Chambers of the Honorable Thomas Penfield Jackson
333 Constitution Avenue, N.W.
Washington, DC 20001
Law Clerk

08/93-05/94: Georgetown University Law Center
Appellate Litigation Clinic
600 New Jersey Avenue, N.W.
Washington, DC 20001
Student Counsel

05/93-08/93: Ross, Dixon & Masback, LLP (now Ross, Dixon & Bell, LLP)
2001 K Street, N.W.
Washington, DC 20006
Summer Associate

08/92-05/93: Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001
Law Fellow (i.e., Legal Research and Writing Instructor)

06/92-08/92: U.S. District Court for the Southern District of New York
Chambers of the Honorable Shirley Wohl Kram
500 Pearl Street
New York, NY 10007
Summer Law Clerk

11/88-1/89: Congressman Bill Green
230 Park Avenue

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New York, NY 10169
Intern; Congressional Aide

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Outstanding Civilian Service Medal – U.S. Army (1/18/01)
   Graduated *magna cum laude,* Georgetown University Law Center
   Order of the Coif
   Dean's List: 1991-94
   American Jurisprudence Awards (for best written exam in class): Administrative Law
   Constitutional Law I
   Corporations
   Evidence

   Graduate *magna cum laude,* University of Pennsylvania
   Graduated with distinction in Sociology
   Alpha Kappa Delta (International Sociology Honors Society)
   Nominated for E. Digby Batzell Award for Best Honors Thesis in Sociology

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

    American Bar Association – former member
    Asian Pacific American Bar Association – member
    National Asian Pacific American Bar Association – member
    Republican National Lawyers Association – former member

11. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

       District of Columbia (7/27/95) (active bar membership)
       Pennsylvania (12/2/94) (inactive status)

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

       Supreme Court of the United States (2/25/02)
       United States Court of Appeals for the First Circuit (9/16/98)
       United States Court of Appeals for the Fourth Circuit (11/6/98)
       United States Court of Appeals for the Ninth Circuit (8/21/98)

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United States Court of Appeals for the D.C. Circuit (8/8/95)
United States District Court of the District of Columbia (7/7/95)
United States District Court for the District of Puerto Rico (11/2/98)

I have contacted the clerk's offices in these jurisdictions and they have no record of any lapses in membership.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Sleepy Hollow Bath and Racquet – member (1998-present)
Fairfax County School Board Advisory Committees (Human Relations; Gifted and Talented) – member (approximately 2001-2005)
Korean American Coalition (DC Area Chapter) –
Board of Directors: 1/01-12/01; 1/05-3/06
Executive Vice President: 1/01-12/01
National Association of Female Executives – member (mid-1990's) (the Association's records do not go back that far and they cannot confirm exact dates)
Sleepy Hollow Manor Neighborhood Association – Vice President (approx. 2000-2003)
Sleepy Hollow Manor Babysitting Co-op – approx. 1997-2004 (President for six-month term in or about early 2000's) (Monthly Secretary per rotation among membership)

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

See attached.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give

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the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I participated on two advisory committees: The Human Relations Advisory Committee (HRAC) and the Gifted and Talented Advisory Committee (GTAC) for the Fairfax County School Board from 09/2001 to approximately 04/2005. In approximately June of each year, the committees issue an annual report to the School Board. Attached are copies of the HRAC and GTAC reports for 2002-2004. I did not include the 2005 report because I left before the reports were written.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

See attached.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

Attached is a list of the speeches that I have given since arriving at the Civil Rights Division. Attached are all the draft copies of prepared remarks that I could find. The actual remarks may have differed slightly from these drafts. In addition, I have attached some relevant articles.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have spoken to reporters on numerous occasions. I did not keep track of the dates of interviews. Virtually all of these interviews were via telephone and on background. In 2006, I participated in an on-the-record radio interview with "Family News in Focus" on human trafficking. I do not have a transcript and I do not know if the program aired.

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

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I was selected by the Korean American Coalition to participate on the Fairfax County School Board's Human Relations Advisory Committee (HRAC). I was one of two individuals selected by HRAC to serve as the HRAC representative on the Gifted and Talented Advisory Committee.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have had only minor roles in political campaigns. In 1988, I stuffed envelopes and answered telephone calls on Election Day for Congressman Bill Green (R-NY). In 2004, I attended a planning meeting concerning Asian outreach for President Bush, but no further action was taken. In 2004, another individual and I were invited to speak to approximately 20 members of the Korean American Coalition – DC Area Chapter. We summarized the Democratic and Republican positions on key issues respectively.

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Yes. The Honorable James L. Buckley (D.C. Cir.) (08/96-09/97)
The Honorable Thomas Penfield Jackson (D.D.C.) (08/94-09/95)
The Honorable Shirley Wohl Kram (S.D.N.Y.) (06/92-08/92)

ii. whether you practiced alone, and if so, the addresses and dates;

No.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

12/07-present: U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW, Suite 5643
Washington, DC 20530
Acting Assistant Attorney General

03/06-12/07: U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW, Suite 5643
Washington, DC 20530
Deputy Assistant Attorney General

04/05-03/06: U.S. Department of Defense, General Counsel's Office
1600 Defense Pentagon
Washington, DC 20301-1600

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Associate Deputy General Counsel

10/99-04/05: U.S. Sentencing Commission
1 Columbus Circle, N.E., Suite 2-500 South Lobby
Washington, DC 20002
Assistant General Counsel

06/03-04/05: U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
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Counsel (Detailee)

01/00-01/01: U.S. Army
Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs)
The Pentagon, Room 2E468
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Special Advisor to the Assistant Secretary of the Army on No Gun Ri (Detailee)

09/97-10/99: U.S. Department of Justice
Criminal Division
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1400 New York Avenue, NW
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Trial Attorney

11/98-10/99: U.S. Attorney's Office, Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
Special Assistant United States Attorney (Detailee)

10/95-07/96: Williams and Connolly, LLP
725 12th Street, N.W.
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Associate

08/93-05/94: Georgetown University Law Center
Appellate Litigation Clinic
600 New Jersey Avenue, N.W.
Washington, DC 20001
Student Counsel

05/93-08/93: Ross, Dixon & Masback, LLP (now Ross, Dixon & Bell, LLP)
2001 K Street, N.W.
Washington, DC 20006
Summer Associate

08/92-05/93: Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001
Law Fellow (i.e., Legal Research and Writing Instructor)

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I have worked in all three branches of the federal government. In addition to public service, I have also worked in the private sector at a law firm. Initially, I obtained criminal and civil litigation experience as a trial attorney in the Department of Justice, Criminal Division, Narcotic and Dangerous Drug Section; the United States Attorney's Office of the Eastern District of Virginia; and at the law firm of Williams and Connolly. I have experience in all stages of litigation: investigation, prosecution, and appeal. I have worked both as a criminal prosecutor and as a criminal defense attorney. Thereafter, I spent several years continuing to work on criminal issues in a non-litigation context at the United States Sentencing Commission and on the Senate Judiciary Committee. I have also served as an in-house advisor while I worked in the General Counsel's Office of two federal agencies: The Department of Defense and the U.S. Sentencing Commission.

In my current position, I supervise over 300 employees in three litigating sections. I am currently supervising the Criminal Section, the Housing and Civil Enforcement Section, and the Special Litigation Section within the Civil Rights Division of the Department of Justice. I have previously supervised the Educational Opportunities Section.

ii. your typical clients and the areas, if any, in which you have specialized.

My typical client is the United States of America. I consider myself a generalist.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
   1. federal courts;
   2. state courts of record;
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings.

All of my practice has been in federal courts. I appeared in court almost daily from 8/94-9/95 and from 11/98-4/99. I appeared in court occasionally from 9/95-10/98, 4/99-12/99. I did not appear in court at all from 1/00-3/06. I appear in court rarely in my current position (3/06-present).

Currently, two-thirds of the sections I oversee are involved in civil litigation and one section involves criminal prosecution. Over my career, roughly 65 percent of my work involved criminal issues and 35 percent involved civil issues.

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d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:
1. jury;
2. non-jury.

I do not recall the exact number of cases I tried to verdict. I handled dockets with hundreds of cases and was the sole counsel when those cases went to trial. My best estimate is that I tried roughly 20 cases, approximately 95 percent of which were non-jury trials. In addition, I have conducted several oral arguments in the federal courts of appeal.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In 1993 or 1994, when I was a student counsel in the Georgetown Law Center Appellate Litigation Clinic, I drafted a petition for certiorari. I do not have a copy of the petition. I contacted the clinic and they do not have a copy of the petition.

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *United States v. Seale,* Crim. No. 3:07-CR9-HTW-JCS (S.D. Miss.) (Judge Henry T. Wingate). Since March 2006, I supervised the investigation and prosecution of James Ford Seale (age 72), a former member of the Ku Klux Klan, who was convicted for his role in the 1964 abductions and eventual slayings of two African-American men. Evidence presented at trial showed that on May 2, 1964, the defendant and his accomplices abducted Henry Hezekiah Dee and Charlie Eddie Moore (who were 19-years old at the time) and drove them to the Homochitto National Forest where the Klansmen beat the victims and interrogated them at gunpoint. Seale and the other Klansmen then bound the two men with duct tape. The Klansmen then drove the victims to Parker's Landing, where they secured Dee to an engine block, secured Moore to iron weights and threw them into the Old Mississippi River. On August 24, 2007, Seale was sentenced to three life terms in prison. My participation in the case consisted of authorizing Division prosecutors to participate in the grand jury investigation, reviewing

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pleadings and substantive motions, participating in discussions of litigation strategy, briefing the Department's leadership, and death penalty review).

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Bobbi Bernstein, Esq.
Paige Fitzgerald, Esq.
Eric Gibson, Esq.
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Civil Rights Division
Criminal Section
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(202) 514-3204

Dunn Lampton, Esq.
United States Attorney (S.D. Miss.)
188 East Capitol Street
One Jackson Place, Suite 500
Jackson, MS 39201
(601) 965-4480

Defense Counsel: Kathryn N. Nester
Assistant Federal Public Defender
200 S. Lamar, Suite 100-S
Jackson, MS 39201
(601) 948-4284

(2) *United States v. State of California, et al.,* No. CV-06-2667 GPS (C.D. Cal.) (Judge George P. Schiavelli). Since March 2006 to present, I worked closely with attorneys in the Special Litigation Section to negotiate a historic settlement with the State of California involving four state mental health care facilities that provide inpatient psychiatric care to nearly 5,000 people committed civilly or in connection with criminal proceedings. The Division found a pattern and practice of preventable suicides and serious, life-threatening assaults by staff and other patients. In two instances, patients were murdered by other patients. The extensive reforms required by the consent decree ensure individuals in the hospitals are adequately protected from harm, are provided adequate services to support their recovery and mental health, and are served in the most integrated setting appropriate for their needs. I edited litigation and settlement documents, engaged in negotiations with officials of the State of California, coordinated expedited review of the complaint and settlement package for the Attorney General's approval and personal signature as required by statute.

Counsel for the Government: Shanetta Cutlar, Esq.
Benjamin Tayloe, Esq.
U.S. Department of Justice
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Counsel for California: Frank S. Furtek, Esq.

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Chief Counsel
State of California
Health and Human Services Agency
1600 Ninth Street, Room 460
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(916) 654-3454

(3) *United States v. Springfield Ford,* No. 2:07-cv-03469; *United States v. Pacifico Ford,* No. 2:07-cv-03470-PBT (Judge Petrese B. Tucker). Since March 2006 to present, I supervised, reviewed and edited pleadings and the consent decree, and participated in negotiations of separate settlements with two automobile dealerships in the Philadelphia area resolving allegations that the dealerships engaged in a pattern or practice of discriminating against African-American customers by charging them higher interest rates on car loans. These are the first two cases alleging discrimination by a car dealership filed by the Justice Department under the Equal Credit Opportunity Act. Under their respective settlement agreements, Pacifico Ford will pay up to $363,166, and Springfield Ford will pay up to $94,565, plus interest, to African-American consumers who were charged higher interest rates. In addition, the dealerships have agreed to change the way they set markups to prevent discrimination. The dealerships will follow the same procedures for setting markups for all customers, and only good faith, competitive factors consistent with ECOA will influence that process. Both dealerships will also provide enhanced equal credit opportunity training to its officers and employees who set rates for automobile loans.

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Patrick Meehan, Esq.
Virginia Gibson, Esq.
Anetta Foster Givhan, Esq.
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Defense Counsel: Reginald J. Brown, Esq.
David W. Ogden, Esq.
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, DC 20003
(202) 663-6000

(4) *United States v. First National Bank of Pontotoc and William W. Anderson, Jr.,* No. 3:06cv061-M-D (N.D. Miss. 2007) (Judge Michael P. Mills). Since April 2006, I supervised the litigation and edited substantive legal documents (e.g., reviewed the

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complaint, dispositive motion papers and consent decree) in the first sexual harassment case ever brought by the Justice Department under the Equal Credit Opportunity Act. The amended complaint alleged that William W. Anderson, Jr. used his position as vice president, loan officer, and branch manager of the First National Bank of Pontotoc to sexually harass women in violation of both the Equal Credit Opportunity Act and the Fair Housing Act. Anderson's conduct included making offensive comments, engaging in unwanted sexual touching, and requesting or demanding sexual favors from female customers in connection with the extension of credit, over a period of years before his employment with the bank ended in May 2004. The lawsuit also alleged that the bank was liable for those actions. After more than a year of litigation, the parties submitted a consent decree, which the court approved on November 6, 2007. The decree provides for $350,000 in monetary relief, and requires bank employees to receive training on the prohibition of sexual harassment under federal fair lending laws. The agreement also requires the bank to implement both a sexual harassment policy and a procedure by which an individual may file a sexual harassment complaint against any employee or agent of the First National Bank of Pontotoc.

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Tanya Ilona Kirwan, Esq.
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Counsel for First National Bank: W. Davis Frye, Esq.
Robert E. Hauberg, Jr., Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz
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Counsel for William W. Anderson, Jr: Grady F. Tollison, Jr., Esq.
Cameron Morgan Abel
Tollison Law Firm, P.A.
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(662) 234-7070

(5) *United States v. Edward Wisniefski,* Cr. No. 99-MJ 412 (E.D. Va.) (Magistrate Judge Jones). Lead prosecutor in a jury trial of a Deputy Assistant Administrator at the Drug Enforcement Agency (DEA) in a public corruption matter. Wisniefski supervised the DEA's Office of Investigative Technology, which had responsibility for procuring equipment for use by the DEA. Wisniefski was the highest ranking official charged in a $2.68 million fraud scheme that lasted nine years. DEA employees (who were supervised by Wisniefski) purchased Sony TVs, Bose speakers, NEC computers and Panasonic laser disc players using government funds. Mr. Wisniefski was charged with

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violating 18 U.S.C. § 641 for allegedly embezzling, stealing and converting to personal use a marine radio purchased with government funds. Mr. Wisniefski was acquitted.

Counsel for the Government: Helen Fahey, Esq.
Steve Learned, Esq.
Dabney Langhorne [now Dabney Friedrich], Esq.
Grace Chung Becker, Esq.
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Counsel for Wisniefski: Blair Brown, Esq.
Kathryn Ruemmler, Esq.
Zuckerman Spaeder LLP
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Washington, DC 20036
(202) 778-1800

(6) From 1998-1999, I worked on four related appeals arising from three separate trials relating to the same narcotics conspiracy involving approximately thirty-one defendants and a 66-count indictment. The convictions related to a decade-long, multi-drug distribution ring led by Israel Santiago-Lugo based in the Virgilio Davila public housing project in Bayamon, Puerto Rico. An ongoing drug war resulted in the murder of at least seven individuals. I wrote the brief and conducted the oral argument in *United States v. Luis Candelaria-Silva,* 162 F.3d 698 (1st Cir. 1998) (Judges Torruella, Lynch and Lipez). Luis Candelaria-Silva was convicted of conspiracy to possess with intent to distribute and distribution of amounts in excess of fifty grams of cocaine base, five kilograms of cocaine, one kilogram of heroin, and an undetermined amount of marijuana, in violation of 21 U.S.C. § 841(a)(1) and 846. The Court of Appeals unanimously held that (1) belated delivery of information regarding arrest of defendant in Massachusetts, as indicative of flight, did not require suppression of evidence; (2) defendant was not prejudiced by evidence of flight; (3) failure to request continuance precluded suppression of flight evidence as discovery sanction; (4) other crimes evidence that co-conspirator brandished gun during police chase was admissible to show defendant's participation in drug conspiracy; (5) photographs of weapons and drug paraphernalia seized at one of defendant's homes was admissible to show existence of far flung drug conspiracy; (6) probative value of that evidence exceeded its prejudicial impact; (7) there was adequate factual predicate to support evidence of flight as evidence of guilt; (8) co-conspirator's statements were admissible over hearsay objections; and (9) instruction on flight was adequate. The case was affirmed and the conviction upheld.

Counsel for the Government: James K. Robinson, Esq.
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Grace Chung Becker, Esq.
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Counsel for Luis Candelaria-Silva: Thomas R. Lincoln, Esq.
P.O. Box 363852
San Juan, PR 00936-3852
(787) 292-1099

(7) *United States v. Marrero-Ortiz*, 160 F.3d 768 (1st Cir. 1998) (Judges Selya, Aldrich and Coffin). This is another appeal in the decade-long Santiago-Lugo narcotics conspiracy and drug war in Puerto Rico. I wrote the brief and conducted the oral argument. The court unanimously held that: (1) evidence was sufficient to support the conviction; (2) alleged variance did not warrant relief; (3) admission of evidence of defendant's involvement in shooting incident was not abuse of discretion; (4) ruling that government did not have to redesignate its evidence was not abuse of discretion; (5) government had no obligations under Jencks Act to produce rough notes taken by agent while interviewing government witness; (6) empanelment of anonymous jury was justified; and (7) district court could easily have cited evidence in support of drug quantity at sentencing but did not do so. The appellant's conviction was affirmed.

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Grace Chung Becker, Esq.
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Narcotic and Dangerous Drug Section
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Counsel for Luis Marrero-Ortiz: Ivan Dominguez, Esq.
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(787) 250-0220

(8) *United States v. Eulalio Candelaria-Silva, et al.*, 166 F.3d 19 (1st Cir. 1999) (Judges Torruella, Lynch and Lipez). This is the third appeal in the decade-long Santiago-Lugo narcotics conspiracy and drug war in Puerto Rico. The appellants were charged with conspiracy to possess with intent to distribute and distribution of cocaine base, cocaine, heroin, and marijuana, in violation of 21 U.S.C. §§ 841 and 846. Nelson Ortiz-Baez was charged with engaging in a monetary transaction in criminal derived property, in violation of 18 U.S.C. § 1957. The indictment also sought asset forfeiture of $6 million. The defendants were tried, found guilty and sentenced to 480 months for Ortiz-Baez, 540 months for Raul Ortiz-Miranda, 210 months for Celenia Reyes-Padilla, 168 months for Rosa Morales-Santiago, 660 months for Eulalio Candelaria-Silva, 360 months for Moises Candelaria-Silva, 480 months for Jose Rosado-Rosado as well as an order of asset forfeiture. On appeal, the First Circuit held that: (1) district court did not err in dismissing prospective jurors who had trouble understanding English; (2) district court improperly excused on ground of undue hardship prospective jurors who had planned vacations; (3) the erroneous exclusions did not constitute a "substantial failure" to comply with the Jury Selection and Service Act of 1968; (4) errors were harmless and did not violate defendants' constitutional rights; (5) evidence about the prior dismissal of certain local criminal charges relating to conduct involved in the charged drug conspiracy

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was not relevant; (6) evidence established that there was a single overarching conspiracy; (7) there were no sentencing errors; and (8) forfeiture of one defendant's substituted asset was proper. The district court was affirmed.

Counsel for the Government:	James K. Robinson, Esq. Theresa M.B. Van Vliet, Esq. Lena Watkins, Esq. Robert Lipman, Esq. Grace Chung Becker, Esq. Criminal Division Narcotic and Dangerous Drug Section 950 Pennsylvania Avenue, N.W. Washington, DC 20530 (202) 514-0917
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Counsel for Raul Ortiz-Miranda:	G. Richard Strafer, P.A. 2400 South Dixie Highway, 2nd Floor Miami, FL 33133 (305) 374-9091
Counsel for Moises Candelaria-Silva:	Enrique Velez-Rodriguez, Esq. P.O. Box 70351 San Juan, PR 00936-8351 (787) 780-0313
Counsel for Celenia Reyes-Padilla:	Salvador Perez-Mayol, Esq. P.O. Box 1157 Guaynabo, PR 00970-1157 (787) 272-5623
Counsel for Jose Rosado-Rosado:	Lydia Lizarribar-Masini, Esq. USDC 124301 14 O'Neill Street, Suite A Hato Rey, PR 00918 (787) 250-7505
Counsel for Nelson Miguel Ortiz-Baez:	Rafael Anglada-Lopez, Esq. P.O. Box 194886 San Juan, PR 00919 (787) 525-1981
Counsel for Rosa Morales-Santiago:	Marlene Aponte-Cabrera, Esq. Banco Cooperativo Plaza 623 Ponce De Leon 404-B Hato Rey, PR 00917

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[No telephone number on file with P.R. Bar Association, Colegio de Abogados de Puerto Rico, (787) 999-6295]

(9) *United States v. Collazo-Aponte, et al.,* 216 F.3d 163 (1st Cir. 2000) (Judges Torruella, Wallace and O'Toole). I co-wrote the brief in this appeal involving the Israel Santiago-Lugo narcotics conspiracy and drug war in Puerto Rico. The court held that: (1) failure to sever trials of defendants charged with murder from those not so charged was not abuse of discretion; (2) empanelment of anonymous jury was warranted; (3) officers' failure to knock and announce prior to breaking padlock on the driveway entrance gate of defendant's residence was justified by exigent circumstances; (4) failure to give multiple conspiracies instruction was not prejudicial error; (5) conviction of both drug conspiracy and drug-related murder did not violate Double Jeopardy Clause; and (6) evidence was sufficient to support enhancement of defendants' sentence for use of a firearm during a drug trafficking offense. Their convictions were affirmed.

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Counsel for Heriberto Ortiz-Santiago:	Kevin G. Little, Esq. P.O. Box 29314 San Juan, PR 00929-0314
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Counsel for Edwin Ortiz-Figueroa:	Jorge L. Arroyo-Alejandro, Esq. Metroparque VII Suite 201 First Street Metro Office Park San Juan, PR 00968 (787) 783-0505
Counsel for David S. Martinez-Velez:	Victor P. Miranda-Corrada, Esq.

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Counsel for Ramon A. Rios-Rios:	Linda Backiel, Esq. Av. E. Pol #497 Apartado #597 Las Cumbres San Juan, PR 00926-5636 (787) 751-4941
Counsel for Edwin Rosario-Rosario:	Rafael Anglada-Lopez, Esq. P.O. Box 194886 San Juan, PR 00919 (787) 250-0917

(10) *Kimbro v. Velten,* 30 F.3d 1501 (D.C. Cir. 1994) (Judges Silberman, Buckley and Williams). I co-wrote the brief and conducted oral argument in this case as court-appointed student counsel representing the appellant Marilyn Kimbro. Ms. Kimbro, a Department of Veterans Affairs employee, filed an assault and battery claim against a co-employee in the Superior Court of the District of Columbia. Following substitution of the United States as a defendant and removal, the employee moved to remand and government moved to dismiss. The district court granted the motion to remand. Upon the government's appeal, the court held that: (1) re-substitution order was an appealable final order under collateral order doctrine, and (2) Attorney General's initial certification that federal employee is acting within scope of employment at time of incident underlying action is prima facie evidence that employee was acting within scope of office or employment, putting plaintiff to burden of producing specific facts to rebut certification. The district court was reversed. Judge Silberman, writing the opinion for a unanimous court, stated that: "("Kimbro (whose case was effectively presented by appointed counsel) . . ."). 30 F.3d at 1503.

Counsel for the Government:	Eric Holder, Esq. John D. Bates, Esq. R. Craig Lawrence, Esq. Michael J. Ryan, Esq. Michael T. Ambrosino, Esq. U.S. Attorney's Office District of Columbia 555 4th Street, N.W. Washington, DC 20530 (202) 514-7566
Counsel for Marilyn Kimbro:	Steven H. Goldblatt, Esq.

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Grace Chung Becker (student counsel)
Sandra L. Massey (student counsel)
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Appellant Litigation Clinic
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Washington, DC 20001
(202) 662-9555

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As the Special Advisor to the Assistant Secretary of the Army (Manpower and Reserve Affairs), I assisted in the supervision of the Army Inspector General's review of allegations that American airmen strafed and American soldiers shot and killed hundreds of South Korean civilians underneath a railroad bridge at No Gun Ri, South Korea during the Korean War. The review culminated in a report issued by the Army Inspector General in January 2001 finding that South Korean civilians were tragically and regrettably killed by U.S. forces at No Gun Ri in July 1950, but that the evidence 50 years later did not indicate a deliberate killing of Korean civilians.

As a Deputy Assistant Attorney General for the Civil Rights Division, I supervised *Operation Home Sweet Home,* an Attorney General initiative to expose and eliminate housing discrimination in America. This initiative was inspired by the plight of displaced victims of Hurricane Katrina who were suddenly forced to find new places to live. The initiative, which is nationwide in scope, focuses on enhancing the fair housing testing program that has been in operation since 1991 by expanding resources, creating a website and toll-free tip line, and increasing outreach to local fair housing organizations. Moreover, the Division took significant steps to improve the effectiveness of these investigations by focusing in areas where Hurricane Katrina refugees were migrating to areas that, based upon federal data, have experienced a significant volume of bias-motivated violent crimes like cross burnings or assaults on minorities. The initiative has resulted in an all-time high number of paired tests in Fiscal Year 2007—exceeding the pre-existing record-high by over 20 percent. It also resulted in the first lawsuit ever filed by the Department alleging discrimination against Asian-Americans based upon its fair housing tests. The complaint in *United States v. Pine Properties, Inc. et al.* (D. Mass.) alleges that defendants violated the Fair Housing Act by discriminating based on national origin against Cambodian-Americans seeking to rent apartments. The defendants own and operate 14 rental properties in Lowell, Mass.

In March 2006, the Department of Justice's Civil Rights Division commenced a statewide investigation of five prison facilities operated by the Delaware Department of Correction pursuant to the Civil Rights of Institutionalized Persons Act. On December 29, 2006, we issued written findings of unconstitutional conditions in four of the five facilities and executed an out-of-court settlement agreement with the State to address constitutional deficiencies in medical and mental heath care. The Division determined that there were no constitutional violations in one of the facilities. The investigation and

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negotiation of a comprehensive settlement were concluded within nine months, a significant accomplishment for statewide, complex pattern or practice investigation. As Deputy Assistant Attorney General, I supervised the investigation and negotiations, and reviewed and edited the findings letter and settlement documents.

In the wake of *Blakely v. Washington,* 124 S. Ct. 2531 (2004), there was significant concern that the constitutionality of the United States Sentencing Guidelines was in jeopardy. Although *Blakely* explicitly stated that it was not considering the federal sentencing guidelines, several lower courts had determined that, in light of *Blakely,* the federal guidelines were unconstitutional, were applying only some (but not all) of the guidelines, and/or were convening juries to decide sentencing matters. As a counsel on the Senate Judiciary Committee, I worked closely with Republican and Democratic staff in a bi-partisan manner researching possible legislative solutions. I organized and helped prepare members for a hearing before the Senate Judiciary Committee on July 13, 2004, entitled "*Blakely v. Washington* and the Future of the Sentencing Guidelines." After the hearing, I worked with other counsel in drafting a Senate resolution urging the U.S. Supreme Court to act expeditiously to resolve the current confusion and inconsistency in the federal criminal justice system by promptly considering and ruling on the constitutionality of the federal sentencing guidelines. Thereafter, I worked closely with outside counsel, who wrote an *amicus curiae* brief in the consolidated cases of *United States v. Booker* and *United States v. Fanfan,* Nos. 04-104 and 04-105 in the U.S. Supreme Court. The *amicus curiae* brief was filed on behalf of Senators Orrin G. Hatch (R-Utah), Edward M. Kennedy (D-Mass.), and Dianne Feinstein (D-Calif.).

United States v. Teel, et al., 1:06-CR-00079-LG (S.D. Miss.) (Judge Louis Guirola, Jr.). Since the spring of 2006, I supervised the investigation and prosecution (e.g., authorized grand jury investigation, reviewed evidence and litigation documents, death penalty review) of eleven defendants for their roles in the death of an African-American inmate named Jessie Lee Williams, Jr. at the Harrison County Adult Detention Center in Gulfport, Mississippi. Williams died from severe brain trauma after being beaten by Teel in the booking room of the jail. Nine defendants pled guilty. On August 17, 2007, a federal jury convicted Ryan Michael Teel, a former corrections officer of conspiracy to violate inmates' civil rights and for obstructing justice by writing a false report to cover up the Williams assault. On November 1, 2007, he was sentenced to life in prison.

As an Associate Deputy General Counsel in the Office of Legal Counsel, I advised Department of Defense components on the Freedom of Information Act, the Federal Advisory Committee Act, copyright infringement, and summer intern recruiting. I also coordinated input within the General Counsel's office and among Judge Advocates General of the various military services and other components on legislation or congressional questions for the record.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

As a Law Fellow at the Georgetown University Law Center in 1992-1993, I taught a weekly legal writing seminar to first-year law students.

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As an Assistant General Counsel at the United States Sentencing Commission, in or about 2002, I trained federal prosecutors on application of the U.S. Sentencing Guidelines at the Department of Justice's National Advocacy Center in Columbia, SC.

In 2006-2007, I gave multiple presentations at human trafficking training sessions around the country and in Taiwan. The audiences consisted of federal, state and/or local prosecutors and law enforcement, non-governmental organizations, and other agency employees.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

23. **Potential Conflicts of Interest**:

    d. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I have mortgages, homeowner's insurance, and real estate investments. I have also previously been affiliated with the Korean American Coalition - DC Area Chapter. I have sought the advice of the Ethics attorney in the Division whenever I see a potential conflict arise. In an abundance of caution, I have recused myself even in matters that do not pose actual conflicts of interest, but that might create an appearance of a conflict. For example, I have recused myself in matters in the Housing and Civil Enforcement Section that may create an appearance of a conflict of interest.

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e. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with the Department of Justice ethics official.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

In the summer of 1993, when I was a summer associate at the law firm of Ross, Dixon and Masbeck, LLP (now known as Ross, Dixon and Bell, LLP), I spent a significant amount of time working on a pro-bono First Amendment libel matter representing Ken Rossignol, the publisher of *St. Mary's Today.* I drafted written discovery requests, substantive motions and conducted witness interviews.

In 1993-1994, I participated in the Appellate Litigation Clinic. As a student counsel, I represented indigent clients in appellate matters in federal court. I drafted a petition for certiorari in the United States Supreme Court, co-drafted an appellate brief, and conducted oral argument. *Kimbro v. Velten,* 30 F.3d 1501, 1503 (D.C. Cir. 1994) (Judges Silberman, Buckley and Williams) ("Kimbro (whose case was effectively presented by appointed counsel) . . ."). It was a two-semester course.

In 1995-1996, while an associate at Williams and Connolly, LLP, I worked on a pro bono civil rights matter, representing an inmate at Lorton. In addition to visiting and interviewing my client, I took a deposition, and engaged in discovery. Also during that time, I represented battered women in domestic violence hearings and negotiated and drafted a settlement agreement in an adverse possession matter.

In 2001, I volunteered as an unpaid member of the Board of Directors and as Executive Vice President of the Korean-American Coalition – DC Area Chapter. I reviewed and updated documents necessary to maintain their 501(c)(3) status and participated in their Rules Committee.

In 1988, I was selected to be an interpreter at the Summer Olympic Games in Seoul, South Korea. The application process consisted of a written application and an interview with the Korean Embassy in New York. Other Korean interpreters came from all over the world including North and South America, Europe, and Asia. I lived at the Olympic Village in Seoul for two months and provided interpretation services for the Canadian and Suriname delegations. Included in the delegation was a Suriname swimmer named Anthony Nesty who was the first person from Suriname to win any Olympic gold medal and the second black athlete to win an Olympic gold medal in swimming. He defeated U.S. swimmer Matt Biondi by 0.01 seconds in the 100-meter butterfly.

Other volunteer activities include: Fairfax County School Board (Human Rights Advisory Committee); Fairfax County School Board (Gifted and Talented Advisory

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Committee); The Pinecrest School; Sleepy Hollow Manor Neighborhood Association (former Vice President); and the Sleepy Hollow Manor Babysitting Co-op (former President; revised by-laws).

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
ash on hand and in banks	$350,000	Notes payable to banks-secured	—
.S. Government securities-add chedule	—	Notes payable to banks-unsecured	—
isted securities-add schedule	$1,160,209	Notes payable to relatives	—
nlisted securities--add schedule	—	Notes payable to others	—
ccounts and notes receivable:	—	Accounts and bills due	—
Due from relatives and friends	—	Unpaid income tax	—
Due from others	—	Other unpaid income and interest	—
Doubtful	—	Real estate mortgages payable-add schedule	$2,616,116
eal estate owned-add schedule	$6,015,000	Chattel mortgages and other liens payable	—
eal estate mortgages receivable	—	Other debts-itemize:	—
utos and other personal property	$100,000		
ash valu -life insurance	—		
ther ass ts itemize:	—		
		Total liabilities	$2,616,116
		Net Worth	$5,009,093
Total Assets	$7,625,209	Total liabilities and net worth	$7,625,209
CONTINGENT LIABILITIES		GENERAL INFORMATION	
s endorser, comaker or guarantor	—	Are any assets pledged? (Add schedule)	No
n leases or contracts	—	Are you defendant in any suits or legal actions?	No
Legal Claims	—	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	—		
ther special debt	—		

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Grace Young Chung Becker
Financial Statement
Net Worth
Securities Schedule

Securities	Amt of each fund w/in "Securities"	Securities Amt	Date of Statement
Spouse Retirement Plan (mutual funds)		$427,124.93	3/31/2007
* Capital Income Builder Fund, Class A	$119,156.04		
* Ivy Asset Strategy Fund, Class B	$66,457.05		
* Legg Mason Opportunity Trust, Primary Class	$67,631.45		
* Legg Mason International Equity Trust	$64,427.02		
* Legg Mason Emerging Market Trust	$39,646.14		
* Legg Mason Spl Investment Trust, Primary Shares	$16,179.12		
* Royce Fd, Micro Cap Fd, Consultant Class	$28,401.59		
* Royce Pennsylvania Mutual Fd, Consultant Class	$25,202.60		
* [Bank Deposit Program Principal]	$23.92		
Spouse IRA (mutual funds)		$132,889.97	5/31/2007
* Cohen & Steers Reit & Util Income Fd Inc.	$16,701.02		
* Ivy Global Natural Resources Fund Class B	$27,140.86		
* Legg Mason Opportunity Trust, Primary Class	$46,469.88		
* Legg Mason International Equity Trust	$10,809.48		
* Legg Mason Emerging Market Trust	$13,804.59		
* Royce Pennsylvania Mutual Fd, Consultant Class	$17,877.38		
* [Pending Reinvested Cash]	$86.76		
Nominee & Spouse - Citigroup Global Mkts (mutual funds)		$114,413.19	3/31/2007
* Capital Income Builder Fund, Class A	$27,540.93		
* Ing Principal Protection Fund V, Class B	$11,110.92		
* Ivy Asset Strategy Fund, Class B	$27,736.87		
* Legg Mason International Equity Trust	$3,589.12		
* Legg Mason Emerging Market Trust	$4,548.22		
* Royce Fd, Total Return Fd Consultant	$12,742.12		
* Royce Fd, Micro Cap Fd, Consultant Class	$15,314.40		
* Seligman Capital Fund Cl C	$3,547.97		
* Seligman Growth Fund Class B	$8,268.94		
* [Bank Deposit Program Principal]	$13.70		
Nominee Roth IRA (mutual funds)		$3,651.42	3/31/2007
* Legg Mason Opportunity Trust, Primary Class	$3,706.42		
* [Cash Balance]	-$55.00		
Nominee IRA (mutual funds)		$3,359.50	3/31/2007
* Legg Mason Opportunity Trust, Primary Class	$3,359.50		
Spouse FBO DC#2 Educ Savings Acct (mutual funds)		$859.19	3/31/2007
* Legg Mason Opportunity Trust, Primary Class	$859.19		
Nominee FBO DC#2 VCSP/CollegeAmerica (mutual funds)		$99,503.24	3/30/2007
* Capital World Growth & Income - 529A Account	$23,145.66		
* Washington Mutual Investors Fund - 529A Account	$35,586.27		
* Capital Income Builder - 529A Account	$40,771.31		
Nominee FBO DC#1 VCSP/CollegeAmerica (mutual funds)		$105,962.96	3/30/2007
* Capital World Growth & Income - 529A Account	$24,941.38		
* Washington Mutual Investors Fund - 529A Account	$38,593.36		
* Capital Income Builder - 529A Account	$42,428.22		
Spouse FBO DC #1 VCSP/CollegeAmerica (mutual funds)		$99,078.49	3/30/2007
* Capital World Growth & Income - 529A Account	$22,747.55		
* Washington Mutual Investors Fund - 529A Account	$35,926.98		
* Capital Income Builder - 529A Account	$40,403.96		
Spouse FBO DC #2 VCSP/CollegeAmerica (mutual funds)		$99,078.49	3/30/2007
* Capital World Growth & Income - 529A Account	$22,747.55		
* Washington Mutual Investors Fund - 529A Account	$35,926.98		
* Capital Income Builder - 529A Account	$40,403.96		
Spouse FBO DC #1 VCSP/CollegeAmerica (mutual funds)		$27,839.93	3/30/2007
* Capital World Growth & Income - 529A Account	$6,433.53		
* Washington Mutual Investors Fund - 529A Account	$10,001.69		
* Capital Income Builder - 529A Account	$11,404.71		
Spouse FBO DC #2 VCSP/CollegeAmerica (mutual funds)		$42,796.61	3/30/2007
* Capital World Growth & Income - 529A Account	$9,877.42		
* Washington Mutual Investors Fund - 529A Account	$15,421.63		
* Capital Income Builder - 529A Account	$17,497.56		
Spouse Roth IRA (mutual funds)		$3,651.42	3/31/2007
* Legg Mason Opportunity Trust, Primary Class	$3,706.42		
* [Cash Balance]	-$55.00		
Total:		**$1,160,209.34**	

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Grace Young Chung Becker
Financial Statement
Net Worth
Real Estate Owned/Mortgages Payable Schedule

Property	Property Value	Loan Balance	Lender
VA Property #1	$800,000	$170,704	First Horizon
NY Property #2	$650,000	$405,115	Countrywide
NY Property #3	$1,600,000	$980,696	Wash Mutual
NY Property #4	$950,000	$612,601	Wash Mutual
NY Property #5	$890,000	$125,000	Wells Fargo
NY Property #6	$400,000	$0	n/a
Wash, DC Property #7	$725,000	$322,000	Suntrust
Total:	**$6,015,000**	**$2,616,116**	

42266.026

U.S. Department of Justice

Justice Management Division

Departmental Ethics Office

Washington, D.C. 20530

Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

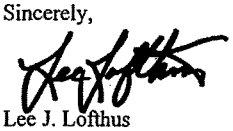
In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Grace Y.C. Becker who has been nominated by the President to serve as Assistant Attorney General, Civil Rights Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Ms. Becker recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute has a financial interest. Ms. Becker has been counseled and agrees not to participate in any particular matter that will directly and predictably affect her financial interests or those interests that are imputed to her, unless she first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208(b)(2). Ms. Becker understands that the interests of the following persons are imputed to her: her spouse; minor children; any general partner; any organization in which she serves as an officer, director, trustee, general partner or employee; and any person or organization with which she is negotiating or has an arrangement concerning prospective employment. Additionally, Ms. Becker will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Precision Economics LLC, unless she first obtains a written waiver, pursuant to Section 208(b)(1).

We have advised Ms. Becker that because of the standard of conduct on impartiality at 5 CFR 2635.502, she should seek advice before participating in a particular matter involving specific parties which she knows is likely to have a direct and predictable effect on the financial interests of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Lee J. Lofthus
Assistant Attorney General
for Administration
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ / Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Becker			First Name and Middle Initial: Grace Y C	
Position for Which Filing	Title of Position: Assistant Attorney General, Civil Rights Division			Department or Agency *(If Applicable)*: U.S. Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 950 Pennsylvania Ave., N.W., Washington, DC 20530			Telephone No. *(Include Area Code)*: (202) 353-0742	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: Deputy Assistant Attorney General, Civil Rights Division - 3/06/06 to present				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Grace Cay Becker			Date *(Month, Day, Year)*: 8/9/07	
Other Review (If desired by agency)	Signature of Other Reviewer: [illegible]			Date *(Month, Day, Year)*: 11/15/07	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [illegible]			Date *(Month, Day, Year)*: 11/20/07	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Becker, Grace, Y.C

SCHEDULE A continued
(Use only if needed)

Page Number: 1 of 10

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Bank of America, Checking Account (J)		X																		X												
2	Bank of America, Checking Account (J)				X														X			X											
3	Bank of America, Checking Account			X																	X												
4	Bank of America Checking Account (J)			X																	X												
5	Department of Justice Federal Credit Union Checking Account (J)			X																	X												
6	Residential Property #1, New York, NY 10019							X										X						X									
7	Smith Barney Money Fund Cash Port Class A (S)	X																			X												
8	American Capital Income Builder Fund Class A (S)					X								X										X									
9	Legg Mason Opportunity Trust Primary Class (S)				X									X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Becker, Grace, Y.C

SCHEDULE A

Page Number 2 of 10

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State																															Law Partnership Income $130,000	
Examples: Kempstone Equity Fund																																
Examples: IRA: Heartland 500 Index Fund																								x								
1 Residential Property #2, New York, NY 10019 (J)							X										X								X							
2 Residential Property #3, New York, NY 10023 (J)							X										X								X							
3 Residential Property #4, New York, NY 10016 (J)									X								X									X						
4 Residential Property #5, Washington, DC 20007							X													X												
5 Residential Property #6, New York, NY 10017						X											X					X										
6 Precision Economics, LLC (Self-employed spouse's business)								X																							Salary	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Becker, Grace Y.C.

SCHEDULE A continued
(Use only if needed)

Page Number: 3 of 10

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Legg Mason International Equity Trust (S)				X									X							X												
2	Legg Mason Emerging Market Trust (S)			X										X							X												
3	Legg Mason Spl. Investment Trust, Inc. Class A - Prim. Sh. (S)			X										X							X												
4	Royce Fund-Micro Cap Fund Consultant Class (S)			X										X							X												
5	American Capital World Growth & Income 529 Account: (S for benefit of DC #1)			X										X								X											
6	Washington Mutual Investors Fund 529 Account: (S-FBO-DC #1)			X										X								X											
7	American Capital Income Builder 529 Account: (S FBO DC #1)			X										X									X										
8	Royce Pennsylvania Mutual Fund Consultant Class (S)			X										X							X												
9	IRA: Legg Mason High Yield Portfolio (S)	X												X								X											

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Reporting Individual's Name

SCHEDULE A continued
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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest *	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	American Capital World Growth & Income 529 Account: (S FBO DC #2)			X										X								X											
2																																	
3	Washington Mutual Investors Fund 529 Account: (S FBO DC #2)			X										X								X											
4	American Capital Income Builder 529 Account: (S FBO DC#2)			X										X									X										
5	American Capital World Growth & Income 529 Account: (FBO DC #2)		X											X								X											
6	Washington Mutual Investors Fund 529 Account: (FBO DC #2)			X										X								X											
7	American Capital Income Builder 529 Account: (FBO DC #2)			X										X									X										
8	American Capital World Growth & Income 529 Account: (FBO DC #1)			X										X								X											
9	Washington Mutual Investors Fund 529 Account: (FBO DC #1)			X										X								X											

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Reporting Individual's Name: Becker, Grace Y.C.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$5,000,001 - $25,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	American Capital Income Builder 529 Account: (FBO DC #1)			X									X									X										
2																																
3	Washington Mutual Investors Fund 529 Account: (S FBO DC #2)			X									X								X											
4	American Capital World Growth & Income 529 Account: (S FBO DC #2)		X										X							X												
5	American Capital Income Builder 529 Account: (S FBO DC #2)			X									X								X											
6	American Capital World Growth & Income 529 Account: (S FBO DC #1)		X										X							X												
7	Washington Mutual Investors Fund 529 Account: (S FBO DC #1)		X										X							X												
8	American Capital Income Builder 529 Account: (S FBO DC #1)		X										X								X											
9	Ing Principal Protection Fund V Class B (J)		X										X							X												

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SCHEDULE A continued
(Use only if needed)

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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Blind Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $5,000,001 - $25,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Legg Mason Int'l Equity Trust (J)		X											X							X												
2	Legg Mason Emerging Market Trust (J)		X											X							X												
3	Royce Fund - Total Return Fund Consultant (J)		X											X							X												
4	Royce Fund - Micro Cap Fund Consultant (J)		X											X							X												
5	Seligman Capital Fund Class C (J)		X											X							X												
6	Seligman Growth Fund Class B (J)		X											X							X												
7	IRA: Ivy Global Natural Resource Fund Class B (S)			X										X							X												
8	IRA: Cohen & Steers Reit. & Util. Income Fund, Inc. (S)			X										X									X										
9	IRA: Legg Mason Opportunity Trust Primary Class (S)			X										X							X												

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SCHEDULE A continued
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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,000)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Tenant/Joint	Spouse/Dep. Child	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gain	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	IRA: Legg Mason Int'l Equity Trust (S)		X													X							X												
2	IRA: Legg Mason Emerging Market Trust (S)		X													X							X												
3	IRA: Legg Mason Opportunity Trust Primary Class		X													X							X												
4	Roth IRA: Legg Mason Opportunity Trust Primary Class (S)		X													X							X												
5	Roth IRA: Legg Mason Opportunity Trust Primary Class		X													X							X												
6	American Capital Income Builder Fund Class A (J)			X												X								X											
7	Ivy Asset Strategy Fund Class B (J)			X												X							X												
8	IRA: Royce Pennsylvania Mutual Fund Consultant Class (S)			X												X							X												
9	Ivy Asset Strategy Fund Class B (S)				X											X							X												

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Becker, Grace, Y.C

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99												
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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SCHEDULE C

Page Number 9 of 10

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	$1,000,001* - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	$50,000,001 - over
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.										
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand										
1	Countrywide Home Loans, Fort Lee, NJ	Mortgage on rental prop. #2, NY, NY (p.2, 11)	2005	Varies	5yr arm					X					
2	Washington Mutual Home Loans, Balt., MD	Mortgage on rental prop. #3, NY, NY (p.2, 12)	2004	Varies	5y arm						X				
3	Washington Mutual Home Loans, Balt., MD	Mortgage on rental prop. #4, NY, NY (p.2, 13)	2005	Varies	5y arm						X				
4	Sonntrust Mortgage, Reston, VA	Mortgage on rental prop.#5, Wash. DC(p.2, 14)	2007	6.25%	30 year					X					
5	Wells Fargo Bank, Long Island, New York	Rental property #1, Line of Credit (p.1, 15)	2007	6%	10 yrs.				X						

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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SCHEDULE D

Page Number 10 of 10

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Korean American Coalition, DC Area Chapter	Non-Profit Community Group	Board of Directors	01/2005	08/2006
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Senator KENNEDY. Fine. Thank you.

I was asking about the Civil Rights Division and the challenge of partisan politics, and had mentioned that Bradley Schlossman had bragged about hiring Republicans, and mentioned about three minority women who had been transferred involuntarily, then a Deputy Chief of the Voting Section, who had served 25 years, transferred involuntarily to a dead-end training job after raising the Georgia voting rights case.

The Boston Globe also reported that, beginning in 2003, an increasing proportion of attorneys hired in three key sections of the Division were members of the Republican National Lawyers Association and other conservative groups, and that the number of new hires with civil rights experience plunged. That was a report in the Boston Globe. Many career section chiefs were removed, other career professionals were transferred, denied assignments, and found working in the Division so difficult that they left.

So the improper injection of political concerns in a personnel matter has devastated morale and undermined the Division's mission and reputation. Federal law clearly prohibits a political litmus test for career civil service employees, and these matters currently are being investigated by the Division's Inspector General and the Office of Professional Responsibility. It is essential that the next head of the Division show leadership in correcting this problem.

You were in the Division when some of these problems occurred. You headed the Division since December of 2007, so the public is entitled to learn what you knew about this and whether you have done anything to correct the problems.

Ms. BECKER. Thank you for the question, Senator Kennedy. As you know, I was a career attorney for over a decade before I ever came to the Civil Rights Division. Let me reassure you and this Committee that I do not engage in politicized hiring, that I have made it clear to my managers in the Civil Rights Division that I will not tolerate politicized hiring. The allegations—many of the allegations that you raise occurred prior to the time that I arrived in the Civil Rights Division in March of 2006. Mr. Schlossman was transitioning out of the Division at the time that I was starting, so I do not overlap with him for any substantial amount of time.

But I can assure you, as a person who's been a career attorney, at the Department of Justice and all over the Federal Government, that I know the value of career attorneys. I know the value of ensuring, maintaining, and facilitating open and robust pre-deliberative conversations, because I think that makes for good litigation decisions at the end of the day.

Senator KENNEDY. Well, let me ask, did you, in any of the time that you were in there—you headed the Division since December 1907—come across these types of activities?

Ms. BECKER. Senator, I am aware of the general allegations and that they are being investigated right now by the Office of Professional Responsibility and the Office of Inspector General, but I am not aware of any new allegations since the time between December 1907 and today.

But you didn't participate in any questioning of any potential hirees and ask them political questions?

Ms. BECKER. Absolutely not, sir.

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

Ms. BECKER. Senator, we have a collaborative approach within the Civil Rights Division, where the political and the career managers work together to review resumes and interview applicants.

Senator KENNEDY. Well, are there instances where the final interviews of applicants for career positions, those judgments and decisions are being made by political appointees?

Ms. BECKER. It's a collective process, Senator. The decision to hire any attorney at the Civil Rights Division is one that, you know, we take very seriously.

Senator KENNEDY. Describe "collective process" in this. I mean, evidently there are circumstances where the political appointee is doing the interview for an attorney, for their position. I assume from your answer that that is the case, that does happen. Does it happen or doesn't it happen?

Ms. BECKER. Everybody participates in the interview process, career attorneys and political managers.

Senator KENNEDY. Well, political managers—

Ms. BECKER. Political appointed managers, I should say.

Senator KENNEDY. All right. Well, in some cases it's career—I'm just trying to get the answers. So I understand in some places that career appointees do the interviews and in other places political appointees do.

Ms. BECKER. And sometimes they're done jointly, sir.

Senator KENNEDY. OK.

Ms. BECKER. It depends upon the schedule—

Senator KENNEDY. All right. Some are done jointly. My question is, with regard to the political appointees, then what happens? They do the interview and they do what? After they make a judgment, then they do what?

Ms. BECKER. We have—we have discussions and we try to reach consensus, Senator.

Senator KENNEDY. And you're going to continue that process if you are approved, or are you going to leave the hiring questions up to career?

Ms. BECKER. Senator, as someone who has been a career employee, I can tell you what I look for in a potential candidate.

Senator KENNEDY. I'm not asking what you're looking for. I want an answer to the question. Are you going to permit political appointees to make judgments or are you going to have career people do the hiring?

Ms. BECKER. I believe this consensus collaborative approach has been working well during the two years that I've been at the Civil Rights Division, Senator. At this point I'm not planning to make any changes.

Senator KENNEDY. Well, the answer then is that you're going to continue to permit political appointees to make judgments in terms of the hiring of career officers. I'm just trying to get the record straight here. It'll be a part of a process. You say they'll talk to other people in making final judgments. But you're not prepared to

give the assurances, given the background that we've had in the Department, that in terms of the new hires, that those judgments in the Civil Rights Division, their interviews are going to be done by career personnel?

Ms. BECKER. Those interviews currently are being done by career personnel. They are a very large part of the process. I take very strong—I weigh very heavily the recommendations of the career attorneys in the Civil Rights Division. But as deputies in the front office do manage these sections, Senator, and do supervise the sections, so long as they are not taking political affiliations into account, which is prohibited, and I made that entirely clear to my staff, there—I believe that there is an appropriate role for the managers to play, sir.

Senator KENNEDY. Have political appointees ever interviewed applicants without career attorneys being present?

Ms. BECKER. Senator, I do not know. We usually have a process. The section chiefs can choose whether or not they want to interview with their—the other individuals in the section or if they'd like to come over to main Justice and interview with the—

Senator KENNEDY. Well, what are you going to do if you get approved? Will you insist that if they're going to follow this up, where you're going to have political appointees doing the interviews, that there are going to be at least career attorneys present?

Ms. BECKER. Senator, I leave it up to the section chiefs to choose and to work with them. As long as everybody gets a chance to interview, I always think of an inclusive process. So if they'd like, they're always welcome to come to an interview where a manager in the front office is interviewing them.

Senator KENNEDY. Now, since you joined the Division have you ever required section chiefs to obtain permission from your office before hiring interns?

Ms. BECKER. I believe they do notify the front office for that. Yes, that's correct.

Senator KENNEDY. What is the reason for that? For what reason? Why do they have to do that?

Ms. BECKER. It's a managerial function, as I understand it, Senator, the process that was in place when I arrived there. It's—it's—it's not—it's not a particularly vigorous one. It's—it's one that we—we do as a—as a management duty, like all of our other management duties, sir.

Senator KENNEDY. Have you—since you joined the Division, have you ever suggested a candidate be considered for a career position, even though the candidate had not applied through the regular application process?

Ms. BECKER. Senator, I believe all of the resumes that we receive, we send to the—to admin. if we get them out of the normal process, or we tell the applicants to send it to admin., which is the through—the way it normally is handled. Some people incorrectly mail—send things directly to us in the front office.

Senator KENNEDY. Well, I gather then from what you're saying, is that there have not been candidates that have not gone through the—that haven't been—that have four career positions, I gather from what you're saying that there haven't been any individuals

that have joined the Division that have not gone through the—the whole interview process. Is that right?

Ms. BECKER. To my knowledge, sir, yes.

Senator KENNEDY. Since you joined the Division, have you suggested a candidate be considered for a career position who had been referred to you by a current or former political appointee?

Ms. BECKER. Not that I recall, no.

Senator KENNEDY. So none of the—your testimony is that there have been—there has been no one that has been suggested to you by a—for a position in the Department from a political appointee?

Ms. BECKER. For a political position, Senator, or for a career position?

Senator KENNEDY. Recommended by a political appointee. Did anybody, a political appointee, make a recommendation to you for any—any—any employment?

Ms. BECKER. Senator, as I sit here I can't think of anyone, but, you know, I'd be happy to double check on that. But I can't think of anybody that—that may have—

Senator KENNEDY. OK.

I see Senator Cardin is here.

Bradley Schlossman, who is a former high-ranking official in the Division, testified before this Committee that he bragged about hiring Republicans for civil service jobs in the Division. Did you ever hear anyone in the Division say anything suggesting that political affiliation should be a factor in personnel matters in the Division?

Ms. BECKER. Senator, I know that these matters currently are under investigation right now, and so I am obviously limited in what I can say in that regard, sir. I know that this is a topic that is of great interest to this Committee, and I have faith that the Office of Professional Responsibility or the Office of Inspector General will fully investigate the matter.

Senator KENNEDY. Well, I'm not asking so much about what they said to each other. I'm just asking whether you had heard that.

Ms. BECKER. As I said, this matter is under investigation, sir. I don't want to do anything that would jeopardize the integrity of that investigation.

Senator KENNEDY. I don't know whether there's a conflict with saying what you know. I know that's being investigated, but you're entitled to say what you know about this. I don't know why you're blocked.

Ms. BECKER. Senator, I'm not. I can tell you that I do not engage in political hiring. I've made that entirely clear to my staff, not just orally to the managers, but in writing as well. I have issued a—reissued the memorandum in December of 2007 that was issued by my predecessor, making clear to everyone in the Civil Rights Division that political affiliation would not be an appropriate consideration for career hires.

Senator KENNEDY. OK.

There have been reports that Mr. Schlossman sought to hire attorneys who were members of the Republican National Lawyers Association, a group to which you once belonged. Do you ever have any reason to believe that any of the Division's political appointees were using the Republican National Lawyers Association as a source of hiring career attorneys?

Ms. BECKER. Senator, I know that some of these issues that you've talked about are under investigation. I can tell you personally that I have never gotten any referrals from the Republican National Lawyers Association while I've been at the Civil Rights Division.

Senator KENNEDY. OK. OK.

I'll recognize Senator Cardin, then I'll come on back. Thank you.

Senator CARDIN. Well, thank you very much, Mr. Chairman.

Ms. Becker, it was a pleasure having an opportunity to meet with you. I thanked you then, and I thank you now publicly for your public service, and thank your family for their understanding and sharing you with the service that you are giving to your country.

I want to just underscore a point about the importance of the position. The Civil Rights Division has been the premiere agency to enforce our civil rights laws. As is true with many of the fields within Department of Justice, I think it's uniquely important on civil rights laws for Federal enforcement. It's very difficult for the States to enforce the laws. They don't have the tools that you have at the national level, including the use of the FBI. You can—that Division historically has made such a difference in the lives and opportunities of all Americans. It's one of the great accomplishments, I think, in the recent history of America.

I say that because I think Senator Kennedy's questions on the independence of judgment here are going to be very important in your role as the head of that Division, if confirmed by the Senate. Let me just mention, perhaps—and I would like to get your view as to the importance of this role and being able to stand up to the politics within the Department of Justice, standing up to partisan politics, standing up to whatever you have to to carry out the responsibilities that are entailed in heading that Division. So maybe I'll pause for a moment and give you a chance, and then I'm going to ask you specifically about one area.

Ms. BECKER. Thank you, Senator Cardin. I do very much appreciate the importance that the role of the Civil Rights Division has played. Just recently over the last couple of months, we have been celebrating the 50th anniversary of the Civil Rights Division, as Senator Kennedy mentioned in his opening statement.

It was a wonderful opportunity to look back upon the formation of the Division and some of the history that underlays what we do here in the Civil Rights Division. It's a tremendous honor and a privilege to work day by day with the men and women who are dedicated to enforcing Federal civil rights laws in this area.

Senator, I can assure you that, as someone who's been a former prosecutor, as someone who's been a career attorney for over a decade, as someone who's worked in all three branches of the Federal Government, I can appreciate the importance of enforcing the law. I know I have a very healthy appreciation for the three branches of government and the three roles that they play, three very distinct roles that they play. I believe that the role of the executive branch, the Justice Department, and the Civil Rights Division is to engage in law enforcement and to vigorously enforce all of the Federal civil rights laws.

Senator CARDIN. I want to talk about one area specifically, which is going to be voting rights, but it could be housing, it could be hate crimes, it could be other areas where, quite frankly, the impression in the community is that there has been political interference with the traditional role of the Department of Justice Civil Rights Division. I share that. I'll tell you up front that I am concerned that we have not had the objective enforcement of these laws as we have in previous administrations.

But elections are pretty fundamental and we're going to have a major national election coming in November. I think it's critically important that the Department of Justice Civil Rights Division be actively involved to hopefully prevent fraudulent activities, to ensure that, to the maximum extent possible, those who wish to participate in the elections are able to participate in the elections and that votes are properly counted.

So let me tell you the dilemma that I face as a United States Senator. I am concerned that there will be political pressure placed on the Department of Justice, the Civil Rights Division, to use your resources as aggressively as possible to make sure that no one who is not eligible to vote and registered is found and make sure that person doesn't vote, even though there is little evidence of any significant problem of people voting who are not eligible and registered to vote.

I'm afraid that that's going to be the directive, exclusive of activities that have taken place in the last several elections that have clearly been aimed at minority communities to prevent minority communities from participating in the numbers that they otherwise would: literature that's distributed giving the wrong election day in minority communities; literature that's distributed, threatening people with being arrested and put in jail if they have unpaid parking tickets and attempt to vote; literature aimed at minority communities, clearly part of election strategies to try to diminish the importance of minority voting.

I would think that the Department of Justice, the Civil Rights Division, could play a really important role to make it clear that those types of election tactics will have no place in America. I suspect that you will probably agree with me, but I am concerned that there may well be political influence that's attempted to be exercised to prevent you, as the Division chief, from making an independent judgment that the resources should be placed to make sure that vulnerable people are not intimidated from voting.

I would just give you a chance as to whether you would stand up to that pressure and whether you're prepared to make an independent judgment on the set of facts which I believe the communities have pretty well already come in with their concerns. But I want to have assurances that, if you are confirmed, that you would make this independent judgment and stand up for the enforcement by the Civil Rights Division that can have the most impact on enfranchising people to vote, particularly minorities.

Ms. BECKER. Senator, thank you for that question. I think we agree that voting is a fundamental right. As the Supreme Court has stated, it's so significant because it's preservative of all the other rights that we have. I've only been overseeing the Voting Section for three months, but in that very short time period I have

made clear to everyone in the Voting Section that I want to vigorously enforce all the provisions, all the statutes, all the voting statutes that are entrusted to the Civil Rights Division to enforce, because that's what I believe our job is to do, to open up the vote to as many people as we can.

You talked about some instances that may adversely affect minorities. That is something that we, of course, are very concerned about in the Civil Rights Division, and if any of those activities implicate one of the statutes that we enforce, I can assure you that we will take appropriate action in that regard.

You also talked about voter fraud. There has been a traditional division of labor within the Department of Justice, and that's reflected in Regulation 28 CFR 0.50, which sets forth the responsibilities of the Assistant Attorney General for the Civil Rights Division, and 0.55, which delineates the responsibilities of the Assistant Attorney General for the Criminal Division.

The vast majority of election crimes are entrusted to the Criminal Division to enforce. There is a small subset that could potentially come to the Civil Rights Division, usually when it involves some allegation of discrimination, which are the types of allegations that we see throughout the Division. So I can assure you that from the Civil Rights Division perspective, that we will vigorously enforce all the laws that we are entrusted to in full.

Senator CARDIN. I would also hope you would be more aggressive than that, in that if you don't have enough laws, let us know about it. We asked the Department of Justice to investigate the conduct of the 2006 election. They declined to do it. They indicated they didn't believe they had adequate laws to handle those circumstances. There has been legislation pending in this Congress on which we've gotten zero help from the administration in getting passed where we give additional tools to go after targeting of minority communities to prevent them from voting, which I would think is fundamental to the mission of the Civil Rights Division.

I understand these are criminal offenses and you have a Criminal Division, but to me these are fundamental civil rights that should be of interest to the Civil Rights Division. Senator Mathias came down to testify in favor of that, the distinguished former Senator from Maryland, a Republican.

I think there is strong bipartisan support to make sure that everyone can participate in this election. I hoped this wouldn't be a partisan issue. I think, without the leadership of the Department of Justice making it clear to candidates that this is off the table, that you can't try to disenfranchise people in order to win an election—that requires leadership.

I think the Division of Civil Rights is the appropriate agency within the Department of Justice to exercise that leadership to make sure we have adequate tools in order to enforce the law. If you don't, ask for more tools and make this a top priority, knowing full well what has happened in so many States, including my own, in recent elections.

Ms. BECKER. Senator, I appreciate that offer. If there are additional tools that we would need, I welcome the opportunity to approach you for any additional tools.

I will tell you, I do know we have discussed your voting bill. I know that this is something you feel very strongly about, and there are certainly provisions in that bill, as the Department has indicated in its newsletter, that it does support—the criminal provisions, I know, are helpful, some of the—provisions that are in there if people are saying that you should vote on Tuesday instead of Wednesday, things of that—false information.

But there—as you know, as I delineated in the letter, some concerns with regard to campaign rhetoric and whether or not the Justice Department should publicly issue corrective action to correct the campaign rhetoric of candidates, and that's an issue that I'd like the opportunity to continue to work with Congress on, if I have the opportunity to do so, and to be as cooperative as I can with respect to various provisions of that legislation.

Senator CARDIN. Well, I welcome those discussions. Quite frankly, I welcome leadership in the Civil Rights Division that will stand up for the traditional role of that agency.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you, Senator.

You know, Ms. Becker, one of the first actions you took as the Acting head of the Division was to file a brief urging the Supreme Court to uphold a strict Indiana photo ID requirement for voting, which had the potential to disenfranchise large numbers of minority voters. A broad coalition of civil rights advocates expressed deep concern about the Indiana law undermining voting rights. The law is also widely viewed as benefiting Republicans, raising the appearance that the Division's support of the law is politically motivated.

Given the potential harm to minority voters, the fact that Indiana was well represented by competent counsel and the appearance that the Division was acting for political reasons, why did you think it necessary to file a brief supporting the Indiana photo ID law?

Ms. BECKER. Senator, thank you for that question. As you know, this is a case that's currently pending before the Supreme Court. The Solicitor General filed a brief on behalf of the United States of America, and I joined that brief on behalf of the Civil Rights Division. I can share with you the Civil Rights Division perspective, but with the caveat that there are other government interests as well. We enforce the Help America Vote Act in the Civil Rights Division.

In that statute it requires that individuals who register by mail, who go to vote in person for the first time, have to show some form of identification. Not necessarily photo identification, but some form of identification. There's a concern that the Supreme Court's ruling here may undermine our ability to vigorously enforce the Help America Vote Act. There are also seven Members of Congress who filed amici briefs on that very issue, sir. But if I may just add that I think that voter ID laws generally—

Senator KENNEDY. Were they all Republicans—

Ms. BECKER. No, sir.

Senator KENNEDY.—the members that signed?

Ms. BECKER. No, sir. I do—if I may, sir, I do think it's important for us in the Civil Rights Division to look at voter ID laws, and in fact any law that has the potential of being used as a pretext to

suppress minority votes very carefully. Senator, I believe that we need to take these instances on a case-by-case basis. Whether it is this law or any other law, if it has a retrogressive effect or a discriminatory purpose, that is something that we will take appropriate action on in the Civil Rights Division, as we have in other voting cases in the Supreme Court.

For example, in Riley v. Kennedy, we filed an amicus brief on behalf of African-American voters, defending the Section 5 objection that we had interposed. Again, that was a brief filed by the Solicitor General's Office, but one that my name appears on as well.

My name also appears on another Supreme Court amicus brief that the Solicitor General filed involving Cracker Barrel, where we argued on the side of the employee, that a Section 1981 claim, which is a private civil rights claim involving contracts, includes retaliation. So if you look at the broad swath of cases that we've brought in the Civil Rights Division, I think that you will see that we try to take these cases on a case-by-case basis and vigorously enforce the laws in the Civil Rights Division.

Senator KENNEDY. Well, what was it about the Indiana photo ID case that was the most troublesome to you? This isn't an old issue. We have the Georgia ID case. The court decision that found that, in effect, it overrode—political personnel overrode the career individuals in the Justice Department, felt that it was more of a poll tax.

What was it about the Indiana photo ID that so distressed you?

Ms. BECKER. Senator, if I may, just—I've only been overseeing the Voting Section for 3 months. I was not there at the time when some of the Georgia ID decisions that you are concerned about were made. I—I can tell you that—I can talk about the process part of it, what my philosophy is in management in terms of including career—

Senator KENNEDY. It's a pretty major—pretty major civil rights case—

Ms. BECKER. Yes, sir. And I'm—

Senator KENNEDY.—the Georgia ID case. Add in the Texas case, the two most notorious cases certainly in the civil rights area in the recent times.

Ms. BECKER. Senator, those are both cases that I was not supervising the Voting Section at the time. I am generally familiar with those cases. I can tell you—

Senator KENNEDY. Well, I'm just trying to figure out what it was about the Indiana photo ID case that you felt so strongly about in terms of, you thought it was necessary to file the brief in the Indiana photo after the history of the Georgia case, which was political interference with government officials overriding government judgments, and then eventually being struck down. What—so that's a pretty red flag. And then you felt, evidently, that the Indiana brief, that you ought to be signing onto that. I'm just wondering what it was in this Indiana photo ID case that—that troubled you so much in terms of—of its—it's—that you thought that you ought to get involved in it.

Ms. BECKER. Senator, as you know, this is pending before the Supreme Court right now and, pursuant to Departmental policy, I can't get into the substance of pending litigation. But what I can—

Senator KENNEDY. You can talk about the case. You can talk about the case. I mean, there's no reason—you filed a brief on the case. There's no reason you can't talk about the case.

Ms. BECKER. Exactly, Senator. And I think the brief speaks for itself and the—

Senator KENNEDY. Well, I'm not asking the brief, I'm asking you. You're the one. I'm not proving the brief. I'm asking you. You're the one that filed it.

Ms. BECKER. Senator, it's—it's pending litigation. I'm not at liberty to discuss the substance of that.

Senator KENNEDY. I'm not asking the substance.

Ms. BECKER. But I'd be happy—

Senator KENNEDY. Just describe what you talked about in the brief, why you filed—what you felt was so necessary in terms of filing the brief on the photo ID law. That's a big deal. In terms of voting rights, it's a big deal.

Ms. BECKER. Senator, I can appreciate that you're interested in this case, as am I. I am very interested in—

Senator KENNEDY. Well, I authored the poll tax back in 1965. I care very deeply about the poll tax. I offered it. And I also was the principal sponsor to make it a constitutional prohibition on it. So I followed these things for some period of time, and this is the—the action of the Justice Department in the Georgia case is one of the most egregious actions that have been taken in recent times. We have a similar case that you felt it was necessary in Indiana, a photo ID case. And I'm just asking you, why—why you felt it was necessary. And you said you can't comment on it, although you filed a brief on it.

Ms. BECKER. Senator, if I have the opportunity to, I'd be happy to discuss this case after the Supreme Court renders its decision. But at this point, Senator, the Solicitor General is representing the United States in the—

Senator KENNEDY. I asked you if you could talk about your brief, Counselor. You could talk about your brief. That's not—that's not—you can talk about your brief. You filed a brief. You can talk about that.

Ms. BECKER. Senator, my understanding is that Departmental policy does not permit me to get into the substance, sir.

Senator KENNEDY. Well, let me—let me move on. Let me move on.

One of the—this is a general concern that—that I have. You've been a political appointee in the Division for the past 2 years, and during that period many of the events under investigation by the IG or OPR played out and the investigation has been ongoing. For this entire time you've had the power to correct the kinds of personnel abuses that are being investigated.

You and the Department have been reluctant to share information during this period. So before you're confirmed as head of the Division, we have to be certain that you haven't been involved in any of the practices under investigation and that you have, in fact, taken steps to correct them. Why shouldn't we have that as a—as a rule?

Ms. BECKER. Senator, with respect, sir, this is a matter that is currently an investigation. As I submitted to you in writing prior

to the hearing, sir, I've been cooperating fully with the investigation. I provided documents pursuant to a document request. They have not contacted me. They have not requested to interview me. I have not had substantial overlap with Mr. Schlossman and I'm not a percipient witness to events that occurred prior to my joining the Civil Rights Division.

Senator KENNEDY. Do you think it would be worthwhile for us to talk to them and find that out for ourselves?

Ms. BECKER. Senator, I believe the timing of my employment in the Civil Rights Division speaks for itself, as does my commitment, and service, and experience that I bring to the table here today.

Senator KENNEDY. OK.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

I just have a couple brief points, and then I know Senator Whitehouse is here and I won't take too much time.

Let me talk a little bit about the housing problem, which is something we have not really focused much on from the point of view of the Department of Justice and the Civil Rights Division. We are concerned that part of the housing problem is predatory lending, where those who were qualified to be in regular mortgages and non-adjustable mortgages were steered into subprime mortgages and adjustable rate mortgages, and that those communities that were primarily steered into this type of practice were minority communities. There is concern in Baltimore City. They've actually filed a lawsuit in this regard. I would like to know your view as to the level of interest that you would have as the Division chief of the Civil Rights Division on predatory lending practices that were involved in the current housing crisis.

Ms. BECKER. Senator, thank you for that question. I think owning your own home epitomizes the American dream for so many individuals here in this country, and if there's something that we could do in the Civil Rights Division to ensure that people have an equal opportunity to achieve that dream without encountering illegal housing discrimination, Senator, I support the vigorous enforcement of those laws.

I've had the honor and privilege of supervising the Housing and Civil Enforcement Section for the last two years, and I am familiar with the work that we've—we've done there. We have been very concerned about the subprime mortgage issue that has been of great concern to everyone in this country, I know, and to the Congress. We have an inter-agency working group that includes the bank regulatory agencies, the Federal Trade Commission, Housing and Urban Development, and the Department of Justice.

We enforce two statutes in the Housing and Civil Enforcement Section, the Equal Credit Opportunity Act and the mortgage provisions of the Fair Housing Act, which enables us to bring some fair lending cases and we've been able to obtain over $25 million of monetary relief on behalf of African-American and Hispanic victims in this area.

The—the deceptive terms, deceptive ads, the predatory practices that you were talking about fall primarily within the jurisdiction, I think, of the FTC and some of the other—perhaps, and the State AGs, I think, have brought some cases under State law in this re-

gard. A lot of the work that we do in the fair housing—fair lending area, I should say, is complementary to that.

We bring—in two areas. One, is pricing discrimination, where individuals of minorities may be treated to one interest rate, a higher interest rate than whites, and the other is in red-lining, where we—where prime lenders refuse to do business in minority neighborhoods, making those minority neighborhoods more susceptible to the subprime market.

Senator CARDIN. And here's where you're going to have a problem in dealing with this issue, because the lending institutions will tell you that one of the reasons they went into the minority community is to show that they were interested in making credit available within the minority community, sort of the reverse of red-lining.

But on the other hand, if the evidence shows that in minority communities they were steered into subprime loans where they should have been in traditional mortgages, that's a form of discrimination against minority communities that needs to be attended to. Once again, I think there are agencies that can handle some of this.

The Civil Rights Division is in a unique position. I would hope this would be something that you would try to help assist them so that we get it right. We don't want the results of what we do to try to fix the housing crisis causing minority communities to be red-lined from mortgage opportunities. But on the other hand, if there were injustices done, the community is entitled to relief.

Ms. BECKER. Senator, I agree. We have this inter-agency approach. We're working proactively with the other agencies in coordination with them in order to help all the victims that have been suffering under the subprime mortgage crisis.

Senator CARDIN. Let me just ask one more question. That is, if you are confirmed, whether you will look to bring more pattern or practice cases in regards to employment discrimination. It's my understanding there's been a 30 percent decline in these types of cases in this administration compared to prior administrations. The pattern or practice cases have been major—areas to make major advancements that affect a significant number of individuals. Would you commit to reviewing this situation and determining why there's been a decline and look for opportunities in which civil rights can be advanced through the pattern or practice cases?

Ms. BECKER. Senator, I share with you the significance and the importance of pattern and practice cases based upon my supervision of other civil sections in the Civil Rights Division over the last 2 years. I've only been overseeing the Employment Section for about 3 months now, but I can tell you that I've looked at this issue.

My understanding is that, on average, the section over a decade, I guess, across both administrations, has been about two pattern and practice cases a year. I do know that they opened 14 pattern and practice investigations last year and that the section is now trying to prioritize those pattern and practice cases. So I share—I appreciate your concern that pattern and practice cases are important and that you want us to bring more. I want us to vigor-

ously enforce all of the laws that we have, including the pattern and practice laws.

Senator CARDIN. Thank you, Mr. Chairman.

Senator KENNEDY. Just to pick up on this point, you've only been in 3 months. But as the Senator pointed out, we have seen the increase—the numbers have decreased 50 percent—has declined 50 percent under the Bush administration compared to the Clinton administration on Title 7. EEOC says the total number of discrimination has increased by 10 percent in 2007. So that's a significant increase. Your response to Senator Cardin, you've only been in 3 months. The question is, are you going to do something about it?

Ms. BECKER. Senator, it—

Senator KENNEDY. And what—what—what are you going to do about it, and how worried are you, if the Senator would just let me—please.

Ms. BECKER. Senator, thank you. My understanding is that EEO referrals in recent years have gone down. I can—but I—as I understand it. But I can tell you what I told Senator Cardin, which is that we have 14 investigations that were opened in 2007, that the section currently is prioritizing those investigations of pattern and practice cases. So, Senator, even in the short time that I've been in the Employment Section, I believe that I have taken action. I hope I have the opportunity to continue to do so.

Senator KENNEDY. Well, just if I can have the attention of the Senator from Maryland, as well, the Division has filed as many cases alleging discrimination against whites as against African-Americans and Latinos combined. It's brought only six cases alleging discrimination against African or Latinos, yet it's filed five cases of discrimination on the basis of whites. Clearly, where there's problems we want prosecution, but we also want the Department to reflect where the problems are the greatest.

Ms. BECKER. Senator, thank you for that question. As I said, I am committed to enforcing all the laws in the Civil Rights Division. I know that the Employment Section recently brought a pattern and practice lawsuit against the largest fire department in—fire department in the entire country, in the fire department of New York. This is a case that was brought on behalf of African-Americans, Senator, and it's a relatively recent case and I hope to have the opportunity to bring more employment cases, if I'm confirmed by the Senate.

Senator KENNEDY. Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Ms. Becker, welcome to the hearing. I'm delighted to see you here with your family. I applaud particularly how well your son and daughter are being patient through all of this. I particularly applaud your son's choice of reading material. I'm a big fan of Calvin and Hobbs. Mine is 14 and we still read it together, reading "Spaceman Spiff". That's pretty good.

Ms. BECKER. Thank you.

Senator WHITEHOUSE. I hope you understand why we're asking these questions. We don't start here with a clean slate, nor do you. We start looking at a Department of Justice that is a place that many of us feel is very special. I was a United States Attorney. It's not the biggest deal in the world, but it was very important to me,

and it meant the world to me to go into that Department of Justice and feel the traditional, the integrity, the independence, the feel that this was an institution that stood for something in American life, and the idea that that Department, instead of standing tall, should be put into the political traces, put in political harness by a political party to do its political legwork, is disgraceful, irrespective of what political party is trying to do that.

So we come at this with a lot of feeling when we see what happened to the U.S. Attorneys, when we see what happened at OLC, when we see what happened at the Civil Rights Division, when we see what happened to the honors program, when we see what happened to non-partisan hiring. This is a very, very serious matter, and so, you know, I hope you'll forgive the intensity that we're pursuing this with.

But I hope you also understand that we're doing this because many of us fear for this Department. We want to see it put right again. We care very, very deeply about that. We see some of the Civil Rights Division issues in that context. I look—for instance, I've sponsored a bill that would make it illegal to engage in vote caging. Do you know what vote caging is?

Ms. BECKER. Yes, sir.

Senator WHITEHOUSE. OK. So I don't need to go into the details of that.

Clearly, you will concede that if there is a significant campaign to target—for instance, minority votes in a vote caging operation—it creates, at a minimum, the risk that more than a handful of voters might be discouraged. Correct?

Ms. BECKER. Senator, I believe that whether it's vote caging or any other conduct that has the potential of suppressing minority voters, it's something that the Civil Rights Division is very concerned about, particularly if it can implicate one of the Federal laws that we enforce.

Senator WHITEHOUSE. Would you be concerned enough for the Department to support the vote caging legislation?

Ms. BECKER. Senator, I have not had an opportunity to look at the details of that legislation and I don't believe the Department has spoken on that. I do believe, Senator, that there are some criminal provisions in there and, as I mentioned earlier, I want to—I want to tread carefully here because we do have a division of labor in the Department of Justice where the vast majority of election crimes are prosecuted by the Criminal Division. So there may be other equities at stake here by other components of the Department of Justice. But—

Senator WHITEHOUSE. Understood. But could you get me an answer on that? The bill is pending now. I've put it in, and I'd love to know where you stand.

Ms. BECKER. Well, Senator, if I'm confirmed, I would welcome the opportunity to work with you on this bill, or any other bill, sir.

Senator WHITEHOUSE. And I—just to followup on what Senator Kennedy was saying, it really does seem that where the underlying strategy will discourage voting in minority communities—for instance, with voter ID programs which have that effect—the Department steps right up, steps right up and does its best, even when there are really no significant cases of any voter fraud, and the

idea that half a dozen or handful of votes is going to swing the election one way or the other is a theoretical possibility.

But, my gosh, that happens rarely in America, and yet, there seems to be a very considerable focus on that. And when the drift is the other direction, when, for instance, there is, you know, e-mails from a prospective U.S. Attorney about a vote caging scheme, silence. There doesn't seem to be the same interest. So what I need to hear from you is some assurance that this is not going to be the closing days, you know, the last political stand of the political occupancy of the Department of Justice, but that you'll help us to put this right and that you will enforce the laws, irrespective of whether they help Republicans or Democrats.

Ms. BECKER. Senator, having been a career attorney, starting my career at the Criminal Division of the Department of Justice, I share with you the concern that you have and the pride that you had in representing the Department of Justice. And Senator, I hope that even in the short time that I've been able to be in the managerial ranks of the Civil Rights Division, that I've been able to convey that same pride and leadership and camaraderie that has always been such an instrumental part of the Department of Justice.

And I believe that what makes the Department of Justice so special, what makes people have confidence in the Justice Department, which makes judges expect more from DOJ attorneys, is the fact that we need to fairly and even-handedly and vigorously enforce all of the laws in the Voting Section, in all the sections of the Civil Rights Division, so that everyone has full faith and belief that we're doing everything we can from every possible front. We take each—each case, each matter on a case-by-case basis, but we will vigorously and carefully investigate the facts and law in each case and take appropriate action wherever necessary.

Senator WHITEHOUSE. And, of course, you understand that it's not enough just to say that, it's important to lead the Department in such a way that the results and the statistics actually bear that out?

Ms. BECKER. Absolutely, Senator. I—I—I believe that in—in the 2-years that I've been there overseeing the sections that I've overseen, and Voting has not been one of those sections, that I have tried to encourage the managers within those sections to do exactly that, and that I will continue to do so if have—I have the opportunity to lead the Division.

Senator WHITEHOUSE. Thank you, Mr. Chairman. My time has expired.

Senator KENNEDY. OK.

Senator Schumer?

Senator SCHUMER. Thank you. First, Mr. Chairman, let me thank you for holding this hearing. I think it's really important. This is an area I know you've been concerned about for close to—well, certainly more than 40 years, and I care a lot about it, too.

I first, as a New Yorker, want to welcome you here, Ms. Becker. I'm always pleased to see a graduate of Stuyvesant High School in public service. My daughter went to Stuyvesant. My parents wanted me to go, but I wanted to play basketball at Madison so I told them the only answers—

Senator KENNEDY. You wanted to do what?

Senator SCHUMER. Play basketball. Mr. Chairman, our team's motto was, "We may be small, but we're slow."

[Laughter.]

Ms. BECKER. I'll tell you, do you know what our school motto was?

Senator SCHUMER. And we were better than Stuyvesant.

Ms. BECKER. What we used to say at Stuyvesant is, "Kick 'em in the guts, kick 'em in the knees, we get higher SATs," was what our athletic motto was after we lost.

Senator SCHUMER. Well, I told my parents the only questions on the test I'd get right were the ones I didn't know the answer to, because anyone I knew the answer, I'd mark the wrong answer. I'd flunk and stay at Madison, which is what happened.

Anyway, I'm sure your family's proud here. I know the whole Korean community in New York, or many of them, are very proud of your accomplishments and it's a great community in New York. Of course, we believe in immigration and we believe in ladders up for people who come from all over the world, and so I'm proud that you're here.

But that doesn't sort of dampen my worry about this Department, my worry about what's happened in this Department. I think it's been plagued by not only mismanagement, but improper politization. I think it's improving, but the Committee needs to examine your qualifications closely because this administration has not been a friend, in my judgment, of civil rights. For instance, what happened with the Georgia case. All the things we heard about, it just makes you really worry about the Department.

So I'm going to ask you some tough questions, and I hope you don't mind that. It has nothing to do with you or the accomplishments that you've had. So I want to go back to the Crawford case, which Senator Kennedy, I know, asked some questions about. But I want to take it in a slightly—I want to pursue it further.

You know what the law is, the new photo ID. In the amicus brief you submitted with the Solicitor General, Paul Clement, you urged the Supreme Court to uphold Indiana's restrictive law, in part because it's justified by the need to prevent in-person voter fraud. And let's be clear here: this will not deal with all voter fraud and ID, but just in-person voter fraud, where someone shows up and says they're not who they are.

What I'd like to do is try to get, as much as I can, yes or no answers here. First, did anyone at the White House or outside the Justice Department ask you or urge you to take the position you did in the Indiana voter ID case?

Ms. BECKER. No.

Senator SCHUMER. OK.

Did anyone inside the Justice Department put any pressure on you to take a certain position in that case?

Ms. BECKER. No.

Senator SCHUMER. Did you consult any career staff members in the Civil Rights Division before you took the position?

Ms. BECKER. Of course. We do in every case, sir.

Senator SCHUMER. And did they recommend that you take that position unanimously, or—

Ms. BECKER. I can't talk about predeliberative recommendations, Senator. But I can tell you that, as someone who's been a former career attorney, I believe that career attorneys have very important perspectives to add to the process and I certainly have encouraged and welcomed a predeliberative process in all of the cases.

Senator SCHUMER. Let me ask you this. Since most election crimes are handled by the Criminal Division—you noted that earlier—is there any reason why Alice Fisher didn't sign onto this brief with you or instead of you?

Ms. BECKER. I don't know her.

Senator SCHUMER. Well, you must have—wait, that's not good enough. It's usually handled by the Criminal Division. Alice Fisher didn't sign. Did you ever talk to Alice Fisher even once about this case?

Ms. BECKER. Senator, I can't get into predeliberative discussions. I can only tell you that the brief speaks for itself, sir.

Senator SCHUMER. Wait. Can you explain to me why you can't get into predeliberative discussions? This is an important question. The head of the Criminal Division, which usually has jurisdiction, doesn't sign on. You do instead. Now, what is the reason that you can't answer a simple yes or no question about, did you discuss this with Alice Fisher? That doesn't reveal any confidences or whatever.

Ms. BECKER. Senator, I can tell you that the names that are reflected on the cover of the brief submitted by the United States are—are—speak for themselves, sir.

Senator SCHUMER. Did you ever talk to Alice Fisher about this, yes or no?

Ms. BECKER. Senator, my understanding is it's part of the predeliberative process and I'm not at liberty to discuss that. But I can tell you—

Senator SCHUMER. And why? What is the reason you're not at liberty to discuss it?

Ms. BECKER. Well, Senator, in order to encourage robust predeliberative discussions, it's important—it's a longstanding departmental policy, Senator, to protect those discussions, and that's part of the discussion.

Senator SCHUMER. But that's about the substance of what was discussed. I'm just asking you, yes or no, did you discuss it with Ms. Fisher?

Ms. BECKER. Senator, my understanding is—is that—it's covering generally those discussions. All the interested parties were—were—were included in the discussion.

Senator SCHUMER. Let me ask you—let me pursue another line here. In the brief, you state that Indiana determined that it faced "a serious problem of actual and potential election fraud", right? Are you aware of any election in the past 7 years where the outcome was affected by in-person voter fraud, the kind you're trying to eliminate, supposedly, with these voter IDs? Any case? Any election?

Ms. BECKER. Senator, this—I'm not—this is a case that is, as I indicated to Senator Kennedy, is one that's pending before the Supreme Court. This is a—that's some of the issues that are pending, that were discussed as part of the case. Senator, once the Supreme

Court renders its decision, I'm happy to engage in substantive discussion.

Senator SCHUMER. Ms. Becker, I didn't ask you a question about the case. I asked you a question about your jurisdiction. If you can't answer this question, I'm going to have serious doubts whether you can move forward. I asked you—you can't just duck everything here and expect to get this nomination. Are you aware of any election in the past 7 years where the outcome was affected by in-person voter fraud? I haven't mentioned any case.

Ms. BECKER. Senator, as I understand it, criminal voter fraud issues are primarily handled by the Criminal Division. I can tell you with—generally—as I understand it, this is a general question. My jurisdiction in the Civil Rights Division is to enforce the voting rights laws that are entrusted to the Voting Section to enforce. Most of the criminal voting fraud issues that you're talking about would be a matter for a different component of the Justice Department.

Senator SCHUMER. So you can't cite to me. You signed this brief. Ms. Fisher didn't. And you can't cite to me a single election where the outcome was affected by in-person voter fraud, when that's the only kind of voter fraud that a voter ID at the polling place would deal with, correct?

Ms. BECKER. Well, Senator, I was talking about the general division of labor with respect to that. I was not talking specifically about the Crawford case. As I understood your question, sir, it was a general question and I was giving you a general response.

Senator SCHUMER. Can I ask you this: isn't it true that a voter ID law won't stop absentee ballot fraud?

Ms. BECKER. Senator, there—Senator, generally speaking, you know, whether these are voter fraud laws that are handled at the State level, there are States—

Senator SCHUMER. No, no.

Ms. BECKER.—look at them. We would look at them, from the Civil Rights Division perspective, as to whether or not they have a retrogressive effect or discriminatory purpose.

Senator SCHUMER. I am asking you a simple question.

Mr. Chairman, can I have a couple more minutes to pursue this?

Senator KENNEDY. Yes. Sure.

Senator SCHUMER. Thank you. I appreciate it.

I'm just asking you a simple question. We have a law that you're defending. It says you have to show a voter ID. The reason for that is to prevent voter fraud. You haven't been able to cite to me a single case—in-person voter fraud—where in-person voter fraud affected the election. Now I'm asking you again, this is a question based on your practical experience, two years as Deputy Director.

Isn't it true that a voter ID law won't stop any absentee ballot fraud for the very reason that the person isn't showing up? Isn't that—that's just an easy yes-or-no question.

Ms. BECKER. Senator, voter—voter—photo ID laws address in-person issues. I think that's what you're getting at, generally. I will tell you, voter fraud—the reason why I'm giving you an answer is because it's a different component of the Justice Department that handles those types of cases. I'm not trying to evade your question,

sir. This—there's a division of responsibility within the Justice Department—

Senator SCHUMER. But you—

Ms. BECKER.—and the voter fraud cases, or election crime cases generally, are handled at the—at the Criminal Division.

Senator SCHUMER. You signed the brief. Alice Fisher didn't.

Ms. BECKER. Yes. And I can tell you what the Civil Rights' interest was.

Senator SCHUMER. Let me just finish. Let me just finish. In the brief, the only cases that were cited, as I understand it, were absentee voter fraud. Yet, the brief goes to voter ID at the polling place, which can only deal with in-person voter fraud. And so I'm asking you a simple question, and that is—I can't—I know you won't answer about the case, although I don't think that's fair. Isn't it true that a voter ID law will not stop absentee ballot fraud? You—you give me one single instance where voter ID stops absentee ballot fraud. Give me an example.

Ms. BECKER. Senator, voter IDs—ID laws are targeted toward—I think I said, generally speaking, as I understand them, targeted toward in-person issues.

Senator SCHUMER. Right.

Ms. BECKER. And—but—

Senator SCHUMER. Wait. So let me stop you there.

Ms. BECKER. But I cannot discuss the substance of this case, Senator.

Senator SCHUMER. Yes.

Ms. BECKER. And I'm very—I'm very cautious here because I don't want to do anything that would adversely affect pending litigation in the Supreme Court.

Senator SCHUMER. OK.

I would just like the record to show that the only cases cited in this—in the—in the brief of the Justice Department were not voter ID, they were absentee ballot fraud. I'd just like the record to show that. And yet, we're doing something here about this.

Now, just two more questions on this. Isn't it true that voter ID won't stop unscrupulous officials from tampering with election results? Voter ID has nothing to do with that, right?

Ms. BECKER. I'm sorry. Can you repeat the question?

Senator SCHUMER. Yes. Voter ID law won't—isn't it true that a voter ID law won't stop unscrupulous officials from tampering with election results? One has nothing to do with the other.

Ms. BECKER. Generally—Senator, again, what we're looking for in the Civil Rights Division are not the voter fraud issues. You're asking a lot of substantive questions on a voter fraud issue. What we're looking for in the Civil Rights Division is whether or not a particular law will have a retrogressive effect or discriminatory purpose. Those are the statutes that we enforce.

Senator SCHUMER. Let me—let me change. You're not—

Ms. BECKER. You're asking me policy questions about this.

Senator SCHUMER. I'm asking you—

Ms. BECKER. I'm not going—

Senator SCHUMER. These are not policy questions. These are factual questions that someone who's in the Department should know. There are certain laws aimed at certain types of fraud and other

types of laws aimed at other type of fraud, and your—your brief cites one type of fraud to justify another type of law.

But let me ask you this. I'm going to move to something else here. In 2002, the Justice Department launched a new ballot access and voting integrity initiative, correct?

Ms. BECKER. Yes.

Senator SCHUMER. Since that initiative started, how many in-person voter fraud cases has DOJ investigated and prosecuted?

Ms. BECKER. Again, Senator, it's another component of the Justice Department that handles those cases.

Senator SCHUMER. You know, wait a second. You signed this brief and you don't know? You're head of Civil Rights Division and you don't know the answer to that?

Ms. BECKER. I can certainly get those statistics for you, Senator.

Senator SCHUMER. You can get me those in writing. In fact, I'm not going to—I'm going to ask the nomination not move forward until I get those answers in writing. And I'd also like to know how many in Indiana. How many nationally and how many in Indiana, because your brief, of course, applies to Indiana.

And I just want to ask you this: did you consult any experts at the Justice Department or elsewhere about the prevalence of fraud in Indiana before deciding to file the brief?

Ms. BECKER. Senator, again, I cannot get into the deliberative process that we have.

Senator SCHUMER. All right. I just want to say this. The nonpartisan Brennan Center did an analysis of 95 voter fraud cases brought by the Justice Department between 2002 and 2005 and concluded that not one of them was a case of in-person fraud that could have been stopped by a photo ID.

I'd like you to just take a look—I'm not asking you now. That wouldn't be right—at this Brennan Center report and get me—see if you disagree with that or if they're—it's fallacious in any way. And I would just say—and I'm going to just ask these rhetorical questions and conclude, and I really thank you, Mr. Chairman, for your indulgence of me here. I care about this a lot.

It doesn't seem logical that you should know the magnitude of this supposed problem before signing your name to—name to a brief endorsing a flawed solution—at least in my judgment, a flawed solution. If you can't cite how many cases, you have no idea, and yet you signed a brief that says we have to have a major law change, that says something to me.

Wouldn't it—and just, you can answer both of these. Wouldn't it call into question whether you should be leader of this Department if—a Department tasked with ensuring voter access, when you publicly support an Indiana law which seems to attack a phantom problem on the one hand, because we don't have many cases—I don't think any in Indiana—of in-person voter fraud, and at the same time would disenfranchise voters? How do you answer that?

Ms. BECKER. Senator, with respect, sir, we were not—what we try to do in every brief that we file in the court is to interpret the law. We—we do not try to change the law, we try and interpret the law. It's up to Congress, certainly, in its role to make the laws or to change the laws as they see fit. So what the Justice Department tried to do in this case, was just to interpret the law.

And Senator, if you look at—we take each instance on a case-by-case basis and if you look at the cross-section of cases that we have filed, you will see that in the Supreme Court we've also filed an amicus brief in *Riley* v. *Kennedy*, where the Solicitor General, on behalf of the Civil Rights Division, defends a Section 5 objection that we made on behalf of African-American voters. We filed other amicus briefs on other non-voting issues in the civil rights context. For example, in *Cracker Barrel*, the CBOCs case where we filed an amicus brief in support of individuals who were bringing private civil rights lawsuits.

So we take each case on a case-by-case basis, Senator, and if I am confirmed, I can assure you that we will continue to do so. I can appreciate that we disagree on this one particular case, but Senator, I would like the opportunity to be able to take this on a case-by-case basis. I share your concern with respect to voter ID laws, because I think we do need to look at them very carefully.

I can tell you that what the Solicitor General, the Civil Rights Division, and the United States is trying to do in this case, was try to interpret the law. Senator, after the Supreme Court has rendered its decision, I hope to have the opportunity to—to discuss the substance of that in more detail.

Senator SCHUMER. I respect what you have to say. I have a different view. I have a view that this administration—and we saw this under Alberto Gonzales's stewardship—uses the pretext of voter fraud, even though they can't prove it, to make it harder for poorer people to vote. You all know the quote. I don't know if it was mentioned earlier here before. One Republican official in Texas said, "If we had a voter ID law it would reduce Democratic turnout by 3 percent." And who would that affect? Poor people, minorities, immigrants.

Voting is a sacred right. It's equal. The poorest person with the least power has the same vote as the richest person with the most power. When you tamper with it for political purposes, I think it's nothing short of despicable. And I believe that the Civil Rights Division—not the rank and file, but the political appointees—has done that in the past and I think we have to make very sure that you won't do it. That's why I think we need more complete answers than just saying "I can't answer this, I can't answer that".

But again, I greatly respect you and where you come from and what you've achieved. This is not a substantive or personal disagreement, but it's one that some of us feel very, very deeply here.

Ms. BECKER. Senator, thank—

Senator SCHUMER. The last word.

Ms. BECKER. Senator, thank you. You know, as—coming from a family of immigrants and naturalized American citizens, I certainly have emphasized to my family members and to other naturalized citizens that I've spoken to down the street at the Federal courthouse the importance of the right to vote, because I think all of us really believe that voting is—is—is so important because it protects all the other rights that we have. And so, Senator, I do share your concern on that issue. You know, I am at a disadvantage because that is pending litigation, so I'm not able to talk about it. I wish I could be more responsive to your questions, but I do hope that I would have the opportunity to at a later date.

Senator SCHUMER. Thank you.

Senator KENNEDY. Thank you very much.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman. Welcome, Ms. Becker.

I want to followup on Senator Kennedy's questions about hiring practices. As I understand it, and as the Boston Globe reported, there was a major change in the Division's hiring practices in 2002, giving political appointees a greater role in hiring decisions with little input from career staff. You've described a collaborative process involving both career employees and political appointees. Is this the same process that was implemented in 2002 or is it a change from what was done between 2002 when you arrived at the Division?

Ms. BECKER. Senator, I joined the Division in 2006. I'm not quite sure what the 2002 process was that you're referring to. I can tell you how I—how we've been doing it in the Civil Rights Division since I've been there over the last 2 years, and it's a team approach, Senator. There—there—there are multiple attorneys that are involved at different levels, you know, trial attorney, deputy chief, chief, Deputy Assistant Attorney General, all—all involved in the process.

It's a collaborative approach. There are certainly more career attorneys that are involved in the process than political—political-appointed managers, but it's—it's one where I've always believed that—that all the managers and the chain of command have an appropriate role, so long as they do not take political affiliation into account for career hires.

Senator FEINGOLD. Well, and other than instructing your staff that political considerations should not play a role in hiring, you don't plan to make any changes in that process, is that right?

Ms. BECKER. Senator—Senator, not—not at this time. But, you know, if I am—if I become aware that there is a problem, if there's an issue, certainly I will be open to reconsidering it as—as things arise. But this process has worked very successfully over the last 2 years during my management there, and I believe it's—it's a process that everyone on the team has been happy with. And from a manager's standpoint, I—I do not see any need to change it at this time.

Senator FEINGOLD. All right. As Senator Kennedy touched on earlier, sections of the Civil Rights Division that are charged with enforcing anti-discrimination statutes have brought fewer cases on behalf of minorities and women, and more cases on behalf of whites and men under this administration. Do you agree that the top priority of the Civil Rights Division should be protecting the rights of minorities, women, and other groups that have been an historic target of discrimination?

Ms. BECKER. Senator, I believe the Civil Rights Division has been, and will continue if I'm confirmed, hopefully, to—to bring cases on behalf of all Americans. Senator, I can tell you, from my experiencing in overseeing the Criminal Section, for example, that—that we bring many cases against many, many vulnerable victims. On the human trafficking front, for example, we've been able to help many women, women of color, over 1,000 women from

over 80 countries, including U.S. citizen victims who have been horribly, horribly victimized through human trafficking. So, certainly, Senator, I—I believe it's important for us to vigorously enforce all of our statutes and—and go where the need is greatest.

Senator FEINGOLD. You know, I think we all agree that discrimination in all forms is intolerable, but the fact is, the resources of the Civil Rights Division are finite and every enforcement action represents a choice of how to allocate those resources. So my question is not whether or not a lot of cases have been brought with regard to the things you just mentioned, but shouldn't the Civil Rights Division prioritize the rights of those who suffer the most discrimination?

Ms. BECKER. Senator, it shouldn't have—I believe—we have, for example, in the post-9/11 era where there was a great concern about whether individuals who are Arab, Muslim, Sikh, or South Asian were being victimized through back—9/11 backlash. There's a—even before I came to the Civil Rights Division there was a 9/11 backlash initiative, and since then we've opened over 800 investigations to ensure that what happened to Asian-Americans in the World War II era was not repeated in the post-9/11 era, Senator.

Senator FEINGOLD. Well, I'm certainly hearing that these areas are being addressed. But what I'm getting at, and I'll let it be for now, is the mix. What are the priorities? Your answers were not clear on what the priorities are.

I'm very concerned about the pattern of the Civil Rights Division coming into court and asking to set aside settlement agreements designed to benefit minorities and women that were reached under the previous administration.

In these cases, the Civil Rights Division has become a de facto advocate for the very party that was accused of violating civil rights laws. Do you believe that attempting to set aside agreements intended to enforce compliance with civil rights law is an appropriate use of the Civil Rights Division's resources?

Ms. BECKER. Senator, I believe that any change in the Department's position should be exceptional. I am not aware, in the—in the two years that I've been overseeing the various sections within the Division, anywhere from 300 to 700 employees, that we've had such a change in policy. But I do think that that's an exceptional situation. If—if it, in fact, occurred, it was before my time.

Senator FEINGOLD. Well, I'd be interested in following that issue and how often it is done, and whether it's the right thing to do.

You presented testimony before the United Nations Committee on the Elimination of Racial Discrimination, or CERD, which has recently issued its concluding observations on the United States' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The CERD report noted a high level of concern, as you basically just alluded to, regarding the increase in racial profiling against Arabs, Muslims, and South Asians in the wake of the 9/11 attack.

Expressing its concerns, the report references the Civil Rights Division's adoption of the revised publication entitled, "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies". As head of the Civil Rights Division, will you commit to reviewing

the policies in that manual to ensure that the administration is taking every possible step to end racial profiling?

Ms. BECKER. Senator, I know this is an interest that—that—that you've had for some time with respect to racial profiling, and I've appreciated your leadership on this. I agree with the President that racial profiling is wrong.

I first learned about the Civil Rights Division's guidelines on racial profiling while I was working here on this very Committee. And Senator, to be clear, even though it is labeled "guidance", it is binding on all Federal law enforcement officers here in the United States. There is extensive training that is going on in the Federal law enforcement arena. For example, at FLETC, the Federal Law Enforcement Training Center, not only do they receive training in racial profiling, they get the guidelines. They're tested on the guidelines. So it is something that we continue to take seriously in the Civil Rights Division.

Senator FEINGOLD. So you'll commit to reviewing policies in that manual to ensure that the administration is taking every possible step to end racial profiling, right?

Ms. BECKER. I'd be happy to work with you on racial profiling issues with respect to the guidance, if you have any concerns with respect to that.

Senator FEINGOLD. Why won't you just commit to reviewing the policies in that manual?

Ms. BECKER. I have reviewed them, Senator. I'm familiar with them. But I'm not quite sure what you—I've reviewed them while I've been at the Civil Rights Division, Senator. But I think—

Senator FEINGOLD. I'm asking you again, as the head of the Civil Rights Division, if you are confirmed, will you do that?

Ms. BECKER. Senator, I will review it, and if there is appropriate action for me to take, I will take it.

Senator FEINGOLD. All right.

The CERD report also encouraged the United States to adopt Federal legislation such as the End Racial Profiling Act which I've introduced in several Congresses, including this one. And you obviously are aware, by working there. Are you familiar with that—with that bill?

Ms. BECKER. Yes, I am, sir.

Senator FEINGOLD. And what is your view on the bill? Will you commit to working on it with the Congress?

Ms. BECKER. I'm not sure I could—I do not—I do not believe the Department has taken a position on it with respect to that bill, Senator.

Senator FEINGOLD. Do you have a view on the bill? You're familiar with it.

Ms. BECKER. I'm generally familiar with it, Senator. But as you know, the Department speaks with one voice, so I'd go back to the Department and I'd see whether or not the Department has taken a position on it, and as a representative of the Department that would be my position, sir.

Senator FEINGOLD. During his confirmation hearings, when asked about the mission of the Voting Rights section, Attorney General Mukasey stated, "I believe that the Civil Rights Division

must follow its traditional of focusing on the most prevalent and significant voting problems."

Ms. Becker, in your view, which is the most prevalent and serious threat to American elections today, voter fraud or voter suppression?

Ms. BECKER. Senator, our focus in the Civil Rights Division has been—in the Federal laws that we have, which primarily target voter suppression. To the extent that there is voter fraud, there are other components of the Justice Department that are focused primarily with respect to that issue, sir.

Senator FEINGOLD. Let me switch to one other thing. The recent CERD articulated a concern about, as I indicated, the disparate impact of felon disenfranchisement laws on racial, ethnic, and national minorities, in particular, African-Americans. As I take it you're aware, more than 5.4 million Americans are disenfranchised by these laws which have an explicitly racist history and a markedly disproportionate impact. In some States, one in four African-American adults are disenfranchised because of the Jim Crow—these Jim Crow provisions. I will soon be introducing legislation to restore the right to vote to people on probation parole who have served their sentences.

Ms. Becker, I would hope that, as the head of the section of the Department of Justice, that that should be at the forefront of protecting citizens from racial discrimination, protecting voting rights. You would agree that these felon disenfranchisement laws have no place in America today. Will you work with me to get the administration's support for legislation to adopt this unjust practice?

Ms. BECKER. Senator, I'd be happy to work with you on this, or any other, legislation.

Senator FEINGOLD. Will you support it?

Ms. BECKER. Senator, I—I haven't seen the bill. I can tell you that, generally, felon disenfranchisement laws, as I understand them, have been determined on a State-by-State basis. To the extent that they would come before the Civil Rights Division, I think it may be in a pre-clearance process, maybe one where it may be something that we'd have an opportunity to review some of these laws.

I can tell you generally that any practice that—that could potentially implicate one of these statutes that we enforce in the Civil Rights Division is something that is of concern to us, particularly when it's involving suppressing the minority vote. So, Senator, I—I would be happy to work with you on this bill. I'm—I'm not familiar with the—the contours of the bill.

Senator FEINGOLD. I want to go back to the voting rights issue again one more time. Again, as we talked about with regard to the priorities of the Division in general, the resources of the Division are finite and the sitting Attorney General stated, "those resources should be focused on the most prevalent and significant problems."

In my view, all available nonpartisan evidence clearly shows while there are very few cases of voter fraud, our elections continue to be undermined by organized efforts to disenfranchise voters. Do you disagree with that assessment?

Ms. BECKER. Senator, generally the voter fraud provisions are handled by a different component of the Justice Department, so I'm not in a position to opine on them, sir.

Senator FEINGOLD. Well, I take it this just proves it. In the Senate, if you wait long enough, you become the Chairman. Is that what's happening here?

I thank the witness very much and the hearing is adjourned.

[Whereupon, at 4:15 p.m. the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses to
Written Questions for Grace Chung Becker
Nominee to be Assistant Attorney General for Civil Rights

From Sen. Dick Durbin
March 25, 2008

1. The Justice Department has been strongly criticized in recent years for advancing policies that restrict voting rights for minority voters. Last December, as Acting Assistant Attorney General for Civil Rights, you co-authored a troubling amicus brief in one of the most important voting rights cases of the decade – the challenge to the Indiana photo ID law currently before the Supreme Court. Your brief waged an aggressive defense of the Indiana photo ID law, which has a discriminatory impact on minorities, the poor, and the elderly. The Indiana photo ID law is the most restrictive law of its kind.

The Justice Department was under no obligation to file a brief in this case -- the United States is not a party in the case. The Justice Department could have stayed out of the case altogether, or it could have filed an amicus brief on the side of minority voters and in opposition to the Indiana law. It chose neither option.

a. **In light of the fact that photo ID laws restrict the number of people eligible to vote, how is your brief consistent with your comment at your nomination hearing that the job of the Civil Rights Division is "to open up the vote to as many people as we can"?**

Answer: The Department has a strong interest in enforcing federal election laws enacted by Congress, including the provisions of the Help America Vote Act (HAVA), to preserve and protect the voting rights of Americans. This case could affect the Department's ability to enforce the Help America Vote Act, which requires voters to provide proof of identification before registering or casting their first ballot. The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion, written by Justice Stevens, determined that Indiana's interests in furthering election modernization, preventing voter fraud, and safeguarding voter confidence justified the burdens imposed on the right to vote. As stated in that opinion: "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Id.* at *8. The concurring opinion stated: "The Indiana photo-identification law is a generally applicable, nondiscriminatory voting regulation[.]" *Id.* at *13 (Scalia, J., concurring). "The universally applicable requirements of Indiana's voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not even represent a significant increase over the usual burdens of voting. And the State's interests are sufficient to sustain that minimal burden." *Id.* at *15 (internal citations and quotation marks omitted).

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

The facial nature of the challenge in *Crawford* is significant. As the lower courts stressed, the plaintiffs in *Crawford* failed to "introduce[] evidence of a single, individual Indiana resident who will be unable to vote as a result of [the Voter ID law,] or who will have his or her right to vote unduly burdened by its requirements." *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, as stated in the Department's brief, "[f]or the 99% of voters in Indiana who already have a photo ID, the law requires no more than that the voter present the ID at the polls. For the less than 1% of Indiana voters who do not yet have an ID, the State offers them such an ID free of charge. And for those who are most likely to find it difficult to obtain even a free ID, state law provides alternative methods of voting that do not require presenting identification." Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita*, No. 07-25 (U.S. Dec. 10, 2007). If the mere possibility that some unspecified voter may not possess the requisite form of identification were enough to invalidate a statute on its face, then it would obviously be more difficult to defend HAVA. It may be that certain Indiana voters could establish that they are nevertheless in fact burdened by the Indiana law. As the Department made clear in its brief, any such individuals could bring an as-applied challenge to the law in such circumstances. *Id.* at 11. Nothing in the

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Department's position in *Crawford* would preclude the law from being declared unconstitutional on an as-applied basis in a concrete setting where the requisite elements of the constitutional claim are met.

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the Department's longstanding practice for determining whether to file an *amicus* brief in a case. Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of the United States' position in *Crawford,* the Civil Rights Division will take any appropriate enforcement action if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner. If confirmed, I am committed to enforcing civil rights statutes that ensure that all eligible voters are able to vote on Election Day.

b. **What role did you play in the Justice Department's decision to file an amicus brief on behalf of the discriminatory Indiana photo ID law? Did you personally review and approve the amicus brief before it was filed?**

c. **Was there a difference of opinion between the position advanced in your brief and the position recommended by any career attorneys in the Civil Rights Division? If you refuse to answer this question, as you did at your nomination hearing, please indicate the specific claim of privilege for your refusal.**

Answer (b – c): The Department has a longstanding process in place for determining what position, if any, it will take in all cases pending before the Supreme Court of the United States. That process includes review by all interested components of the Department. That process was followed in this instance. I was the Acting Assistant Attorney General for the Civil Rights Division when the brief was filed. I was involved in the process, and my name appears on the brief. The Solicitor General makes the final decision with respect to whether to file a brief in the Supreme Court of the United States and, if so, what position to take after hearing from the interested components and the lawyers in his office.

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

2. In August 2005, the Civil Rights Division pre-cleared a photo ID law in Georgia which federal courts subsequently struck down as an unconstitutional modern-day poll tax. According to media reports, career staff in the Voting Section recommended that the Justice Department object to the Georgia photo ID law, but that recommendation was rejected by political supervisors such as Hans von Spakovsky and their hand-picked section chief, John Tanner.

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Do you stand by the Justice Department's August 2005 decision to pre-clear the discriminatory Georgia photo ID law, or do you believe it was a mistake?

Answer: The Georgia identification law was precleared before I came to the Civil Rights Division, and I was not involved in the decision in any way. It is my understanding that the Division made the proper decision under the facts, and no evidence has been produced to indicate that an objection should have been made, including in the subsequent private litigation. No court decision has called into question the Department's decisions to preclear the Georgia Voter ID submissions. In Georgia, both state and federal courts have dismissed lawsuits challenging the imposition of the ID requirement.

The Georgia voter identification law, which amended an existing voter identification statute that had been precleared by the prior Administration, was precleared under Section 5 of the Voting Rights Act after a careful analysis that lasted several months. The decision took into account all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of State photo identification and driver's license cards. The data showed, among other things, that the number of people in Georgia who already possess a valid photo identification greatly exceeds the total number of registered voters. In fact, the number of individuals with a valid photo identification is slightly more than the entire eligible voting age population of the State. The data also showed that there is no racial disparity in access to the identification cards. The State subsequently adopted, and the Department precleared, a new form of voter identification that will be available to voters for free at one or more locations in each of the 159 Georgia counties.

In *Common Cause/Georgia v. Billups*, the district court did *not* conclude that the identification requirement violated the Voting Rights Act. To the contrary, the court refused to issue a preliminary injunction on that ground. The court instead issued a preliminary injunction on constitutional grounds. The Department cannot lawfully consider constitutional grounds in conducting a preclearance review under Section 5 of the Voting Rights Act. Accordingly, the court's preliminary ruling did not call into question the Department's preclearance decision. On September 26, 2007, *Common Cause/ Georgia v. Billups* was dismissed by the federal district court based on lack of standing; the court also rejected the plaintiffs' claims under the Equal Protection Clause.

3. Although Hans von Spakovsky is no longer employed by the Civil Rights Division, your position in the Indiana photo ID case suggests that his legacy of zealous advocacy for photo ID laws is alive and well there. In a March 10, 2008 essay published by the Heritage Foundation called "Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation," Hans von Spakovsky wrote a vigorous defense of photo ID laws. The article can be found at: http://www.heritage.org/Research/LegalIssues/lm22.cfm.

Please review this article and indicate what, if anything, you disagree with in it.

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Answer: The Department's position on voter identification laws is clearly stated in our briefs in the cases in which they are filed.

4. On November 3, 2006, prior to a mayoral election involving a bi-racial contest, a major cross-burning took place in the town hall parking lot in Grand Coteau, Louisiana. Last month, your predecessor Wan Kim indicated in writing that the Civil Rights Division was continuing to investigate this troubling incident.

Please confirm the status of the investigation into this matter and confirm whether it is being conducted by the Voting Section, the Criminal Section, or both sections, and under what statutes. Please describe the extent of coordination between these sections in this investigation, if any.

Answer: The Criminal Section has an open investigation, raising potential violations under 18 U.S.C. § 245, into the cross burning that occurred in advance of the November 2006 elections in Grand Coteau, Louisiana, and the Voting Section coordinated the deployment of monitors to the polls there for that election.

5. Voter intimidation can create an atmosphere that discourages voters, particularly minority voters, from freely participating in the political process. There are two federal statutes that can be used to reach conduct deemed intimidating to voters: Section 1971(b) of the Civil Rights Act of 1957, which states that no person "shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote," and Section 11(b) of the Voting Rights Act of 1965, which bars conduct deemed intimidating, threatening or coercive to voters.

a. **Please identify the number of cases and investigations that have been brought or pursued by the Civil Rights Division under Section 11(b) and Section 1971(b) since January 2001, and provide a summary of each case and investigation.**
b. **Please provide copies of any training materials used to educate attorneys in the Civil Rights Division's Voting Section regarding these two statutes. Please also provide citations to all Justice Department website pages that reference its enforcement responsibilities and cases under these statutes.**

Answer (a – b): It is my understanding that the Division has opened approximately 37 investigations that include allegations of intimidation, threats, or coercion since 2001. These investigations implicate multiple statutes, including Section 11(b) and Section 1971(b). It is my understanding that the Division has brought only three lawsuits, all involving non-governmental defendants, under Section 11(b) in its entire history. The only relief available under Section 11(b) is declaratory and injunctive relief to bar similar future misconduct, which can also be obtained under Section 2 of the Voting Rights Act if the misconduct has a racially discriminatory intent or result.

Summaries of the three lawsuits follow:

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- In *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966), the United States alleged that the defendants applied economic penalties against blacks who had registered to vote, including terminating sharecropping and tenant farmer relationships. The court entered judgment for the defendants.

- In *United States v. North Carolina Republican Party* (E.D.N.C. 1992), the United States entered into a consent agreement to resolve allegations regarding the mailing of misleading voter eligibility information.

- In *United States v. Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007), the United States won a judgment that the defendants had violated Section 2 of the Voting Rights Act for intentional discrimination against voters and candidates, but the court declined to rule in the United States' favor on the Section 11(b) count.

Enclosed are examples of written materials used in training Voting Section attorneys on the enforcement of federal voting laws that prohibit threatening, intimidating, or coercive actions aimed at voters. In addition, attorneys in the Voting Section are provided copies of the statutes the Section is responsible for enforcing, and they also have access to the publicly-available material found on the Voting Section Home Page on the Department's website (see http://www.usdoj.gov/crt/voting/index.htm). Furthermore, the Voting Section has an active mentoring program whereby senior attorneys in the Section provide mentoring and leadership to junior attorneys to ensure they are properly trained as to their roles and responsibilities with regard to the enforcement of all federal voting laws.

6. You were the Deputy Assistant Attorney General with oversight of the Civil Rights Division's Educational Opportunities Section in 2006 when the Justice Department filed an amicus brief with the Supreme Court in the landmark case addressing the ability of public schools in Seattle, Washington and Jefferson County, Kentucky to voluntarily use race as a factor in achieving school integration.

In its letter of opposition to your nomination, the NAACP Legal Defense and Educational Fund, Inc. wrote that your position in this case "constituted a reversal of historic proportions by the Civil Rights Division, which throughout its fifty-year existence has forcefully advocated for equal educational opportunity. Ultimately, five members of the Supreme Court disagreed with the position advocated by the Division and recognized that limited race-conscious measures can be used in pursuit of the compelling interests in promoting diversity and avoiding racial isolation in schools."

a. **What role did you play in the Justice Department's decision to file an amicus brief in opposition to school integration in this case? Did you personally review and approve the amicus brief before it was filed?**

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b. **Was there a difference of opinion between the position advanced in your brief and the position recommended by any career attorneys in the Civil Rights Division? If you refuse to answer this question, please indicate the specific claim of privilege for your refusal.**

Answer (a – b): The Department has a longstanding process in place for determining what position, if any, it will take in cases pending before the Supreme Court of the United States. That process includes review by all interested components of the Department. That process was followed in this instance. I was the Deputy Assistant Attorney General overseeing the Educational Opportunities Section when the brief was filed. I was involved in the process, although my name does not appear on the briefs filed in these cases. The Solicitor General makes the final decision with respect to whether to file a brief in the Supreme Court of the United States after hearing from all interested components.

Let me clarify the record on one point. The NAACP Legal Defense and Educational Fund (LDF)'s letter is inaccurate in several respects. For instance, LDF claims that the Department took the position that "any voluntary race-conscious action to promote integration in public schools violates the Equal Protection Clause." The United States' briefs, however, acknowledge that in certain situations the Constitution permits the limited consideration of race to attain a genuinely diverse student body, although the particular race-based student assignment plans at issue failed to meet the requirements of strict scrutiny. Moreover, contrary to the LDF's assertion, the Supreme Court agreed with the United States, striking down both student assignment plans on grounds substantially similar to those set forth in the government's briefs. In addition, contrary to the suggestion in the letter, the United States' position in these cases was consistent with its position in prior cases involving the voluntary use of race by state actors.

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

7. At your nomination hearing, you indicated that political appointees in the Civil Rights Division front office interview all career attorneys before offers are extended to them. If true, that represents a troubling departure from previous Administrations, when the vast majority of career attorneys were hired without being interviewed by a front office political appointee.

a. **Is it, in fact, your policy that no career attorney may be hired until he or she is interviewed by a political appointee in the Civil Rights Division front office?**

Answer: No.

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b. Since you were appointed to be the Acting Assistant Attorney General, how many career attorneys have been hired in the Civil Rights Division? How many of those career attorneys were interviewed by one or more political appointee in the Civil Rights Division front office?

Answer: Since I have been Acting Assistant Attorney General, six career attorneys have begun working in the Civil Rights Division. Additionally, twenty-seven other attorneys have accepted offers of employment but have not yet begun working in the Division. The Division does not track the number of candidates who interview with only career attorneys or the number who interview with both career and non-career attorneys. Nevertheless, it is my understanding that some of those attorneys were interviewed only by career attorneys while other attorneys were interviewed by both career and non-career attorneys.

c. What is the breakdown by race and gender of career attorneys hired into the Civil Rights Division since you were appointed to be the Acting Assistant Attorney General?

Answer: Since I have been Acting Assistant Attorney General, six career attorneys have begun working in the Civil Rights Division. One attorney is a Hispanic female, one is an Asian female, two are African-American males, and two are white females. The Division has not yet confirmed the race of the other attorneys who have not yet started working at the Department, but fifteen are male and twelve are female.

8. At your nomination hearing, you refused to answer the following questions from Senator Kennedy: "Did you ever hear anyone in the [Civil Rights] Division say anything suggesting that political affiliation should be a factor in personnel matters in the Division?" and "Do you ever have any reason to believe that any of the Division's political appointees were using the Republican National Lawyers Association as a source of hiring career attorneys?" You testified you could not answer these questions because of the ongoing investigation by the Justice Department's Inspector General and Office of Professional Responsibility. That is not a legitimate basis for declining to answer these questions.

a. Did you ever hear anyone in the Civil Rights Division say anything suggesting that political affiliation should be a factor in personnel matters in the Division? If so, please identify each such instance you recall, including the identity of the speaker and the general nature of the comment.

Answer: I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

b. Do you have any reason to believe that any of the Civil Rights Division's political appointees were using the Republican National Lawyers Association

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as a source of hiring career attorneys? If so, please identify each such political appointee.

Answer: No.

9. The Justice Department's Inspector General and Office of Professional Responsibility are conducting a joint investigation into whether politicized prosecutions and hiring practices at the Justice Department – including the Civil Rights Division during your stint as a Deputy Assistant Attorney General – involved violations of federal laws and policies.

Will you pledge to implement all recommendations contained within this report after it is released?

Answer: If the final report of the investigation includes recommendations for the Civil Rights Division, I will ensure to the full extent of my authority that appropriate actions are taken.

10. At your nomination hearing, you indicated you had not been interviewed by the Justice Department's Inspector General and Office of Professional Responsibility during the course of their investigation of the Civil Rights Division. You testified: "They have not contacted me. They have not requested to interview me."

Is that comment still valid? If not, please indicate when you were interviewed by OIG or OPR and how long you spoke to them.

Answer: I was interviewed by OPR/OIG investigators for less than one hour on Wednesday, March 19, 2008.

11. Hans von Spakovsky and Bradley Schlozman have been strongly criticized during the past year for their work in setting voting rights policy in the Civil Rights Division that restricted minority voting rights and fostered partisan advantage.

Will you make a commitment that Hans von Spakovsky and Bradley Schlozman will not be brought back to work in the Civil Rights Division in 2008?

Answer: Yes.

12. Last December, you appointed Christopher Coates to be the Acting Chief of the Voting Section. According to a May 6, 2007 *McClatchy* article, Christopher Coates, despite his previous employment by the ACLU, "seemed to grow more conservative after his [Civil Rights Division] superiors passed him over for a promotion in favor of an African-American woman, and he filed a reverse-discrimination suit," according to career attorneys interviewed for the article.

a. **Please indicate why Mr. Coates was chosen to serve in this position.**

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b. **Did you consult with any career attorneys before making this appointment? If so, how many?**

c. **Were other candidates considered for this Acting Chief position? If so, how many candidates were considered? Please identify the race and gender of all candidates considered for this position.**

d. **What was the resolution of Mr. Coates' reverse-discrimination suit?**

Answer (a – d): Mr. Coates is temporarily serving as the Acting Section Chief because he is the Principal Deputy Chief, the second-highest ranking official in the Voting Section. This appointment was consistent with standard protocol and included consultation with career professionals. I am not aware of any reverse discrimination suit filed by Mr. Coates in any court and have confirmed that no such suit was ever filed. Any internal claims or charges of discrimination are confidential.

13. Two months ago, you appointed John Gadzichowski to be the Acting Chief of the Civil Rights Division's Employment Litigation Section. Several former career employees of that section have contacted Senate Judiciary Committee staff and expressed the belief that John Gadzichowski is not an appropriate selection for this position. They indicated Mr. Gadzichowski was appointed Acting Chief of that section in 1992 but was removed the following year after career staff complained about his management practices and demoralizing impact on the section.

At your nomination hearing, you testified: "I can assure you, as a person who's been a career attorney at the Department of Justice and all over the federal government, that I know the value of career attorneys."

a. **In light of past complaints about Mr. Gadzichowski's performance by career attorneys, why did you appoint him to be Acting Chief of the Civil Rights Division's Employment Litigation Section?**

b. **Did you consult with any career attorneys before making this appointment? If so, how many?**

c. **Were other candidates considered for this Acting Chief position? If so, how many candidates were considered? Please identify the race and gender of all candidates considered for this position.**

Answer (a – c): Mr. Gadzichowski is temporarily serving as the Acting Section Chief because he is the Principal Deputy Chief, the second-highest ranking official in the Employment Litigation Section. This appointment was consistent with standard protocol and included consultation with career professionals.

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14. In response to a written question I submitted last year, your predecessor Wan Kim confirmed that Civil Rights Division career attorneys had been involuntarily transferred or terminated in recent years.

Please indicate the number of career attorneys (including managers) in the Civil Rights Division who have been involuntarily transferred or terminated since January 2001. I am not asking for the names of the individuals, so no privacy interests are implicated.

Answer: While the Division does not keep these statistics, to the best of my recollection, I have not involuntarily transferred any employees under my supervision at the Civil Rights Division, and I recall only one attorney who resigned in lieu of termination. Additionally, I am aware that the press reported that three attorneys were involuntarily transferred from the Appellate Section before I started supervising that Section. It is my understanding that all three of those attorneys were transferred back into the Appellate Section before I started supervising that Section.

15. At your nomination hearing, you indicated there were 14 ongoing "pattern or practice" investigations being conducted by the Employment Litigation Section.

a. **Please provide summary information about each of these investigations, including the nature of the victims (women, African Americans, etc.)**

Answer: It is my understanding that these 14 ongoing investigations include alleged discrimination on the basis of race, color, national origin, and sex. As these are ongoing investigations, I cannot comment further.

b. **Please provide summary information about each "pattern or practice" complaint filed by the Employment Litigation Section since 2001, broken out by year, including the nature of the victims (women, African Americans, etc.)**

Answer: Attached please find a list of all cases filed since 1993 by the Employment Litigation Section (ELS), which I began overseeing in December 2007. This list was previously provided to the Committee on January 25, 2008, in response to written questions to the Attorney General. ELS has filed the following additional lawsuits since that list was submitted:

Tracey Marshall v. Hillsborough County Clerk
On October 12, 2007, we filed a compliant alleging that the Hillsborough County Clerk violated the Uniformed Services Employment and Reemployment Rights Act of 1994 by failing to return Ms. Tracey Marshall to her pre-service position as supervisor of the Court Clerk II Section upon the conclusion of her 2005 military deployment. The complaint also alleged that the Clerk's Office violated USERRA by retaliating against Ms. Marshall for filing a USERRA claim with the Department of Labor. The complaint seeks back wages, interest, and remedial measures.

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Anthony Jackson v. Union County College
On December 14, 2007, we filed a complaint on behalf of Anthony Jackson against Union County College alleging violations of the Uniformed Services Employment and Reemployment Rights Act of 1994. The complaint alleges that Union County College discriminated against Mr. Jackson because of his military service, including discharging Mr. Jackson without cause. The complaint seeks back wages, interest, and other remedial measures.

United States v. Policia de Puerto Rico
On March 3, 2008, we filed a complaint under Section 706 of Title VII of the Civil Rights Act of 1964, as amended, against the Puerto Rico Police Department alleging that the Police Department engaged in gender discrimination against Ms. Jeanette Caraballo by subjecting her to a hostile work environment, including sexually discriminatory comments and insults, and assignments to clerical duties not required of male officers. The complaint further alleged that the Police Department discriminated against Mr. Manuel Bonilla by retaliating against him because he opposed what he reasonably believed to be sex discrimination against Caraballo and other female co-workers. This case is currently being litigated.

Jerimiah Macintire v. Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing)
On March 14, 2008, the United States District Court for the Western District of Wisconsin approved and entered the Settlement Agreement executed by all parties and tendered with the Complaint we filed on behalf of Jerimiah Macintire in the case *Jerimiah Macintire v. Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing)*; Civil Action No. 08–cv–134 (W.D. Wis.). The Complaint, which was filed on March 11, 2008, alleged that Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) and Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing) violated the Uniformed Services Employment and Reemployment Rights Act (USERRA). Specifically, the Complaint alleged that the defendants violated Section 4312 and 4313 of USERRA by failing to reinstate Mr. Macintire to his pre-service position following the completion of his Reserves duty and violated Section 4311 of USERRA by taking into account his military status in deciding whether to discontinue his employment with Pan-O-Gold Baking Company.

Thornton v. Wal-Mart
On March 31, 2008, we filed a complaint on behalf of Sean K. Thornton in the United States District Court for the Middle District of Florida alleging that Wal-Mart Stores, Inc. (Wal-Mart), violated the Uniformed Services Employment and Reemployment Rights Act (USERRA). Specifically, the complaint alleges that Wal-Mart violated Sections 4312 and 4313 of USERRA by failing to reinstate Mr. Thornton to his pre-service position following his service in the Air Force.

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c. Please provide summary information about each "disparate impact" complaint filed by the Employment Litigation Section since 2001, broken out by year, including the nature of the victims (women, African Americans, etc.)

Answer: Of the cases listed in response to Question 15.b., the following were "disparate impact" cases: *United States v. City of New York*, *United States v. City of Chesapeake, Virginia*, *United States v. City of Virginia Beach*, *United States v. City of Erie, Pennsylvania*, and *United States v. Delaware.*

16. According to your Senate questionnaire, you are a former member of the Republican National Lawyers Association.

Why did you join this organization? What years did you belong to this organization? Please describe the duties you performed and services you rendered as a member of this organization.

Answer: In 2005, prior to working in the Civil Rights Division, I joined the Republican National Lawyers Association (RNLA) based upon a friend's recommendation. I did not attend any RNLA events and was never an active member. My membership expired in October 2007.

17. Before you began working in the Civil Rights Division as a political appointee in March 2006, you had no ostensible background in the field of civil rights law enforcement or policy. According to your Senate questionnaire, you had nine different jobs in twelve years between working in the Civil Rights Division and graduating from law school in 1994: (1) law clerk to Judge Thomas Penfield Jackson, (2) associate at Williams and Connolly, (3) law clerk to Judge James Buckley, (4) Special Assistant U.S. Attorney in Virginia, (5) trial attorney in the DOJ Criminal Division's Narcotic & Dangerous Drug Section, (6) Special Advisor to the Assistant Secretary of the Army, (7) counsel to Senator Hatch on the Senate Judiciary Committee, (8), [sic] Assistant General Counsel to the U.S. Sentencing Commission, and (9) Associate Deputy General Counsel at the Department of Defense.

None of these jobs appear to have involved civil rights law enforcement or policy. Similarly, none of your summer jobs or extracurricular activities in law school or college reflect an involvement in civil rights issues.

What made you interested in working in the Civil Rights Division?

Answer: My interest in working in the Civil Rights Division comes from my family, my professional experiences, and my community service. Both of my parents immigrated to the United States from South Korea and are naturalized American citizens. English is their third language (after Korean and Japanese) because they grew up during the Japanese occupation of Korea and were required to speak Japanese in schools. My parents are pioneers of the Korean-American community in New York City. My parents came to the United States with little money. After several years, they took a financial

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risk and opened one of the first Korean businesses on West 32nd Street – a pharmacy that also sold cosmetics and gifts. That area of New York City is now known as "K-Town," short for Korea Town. I spent many hours of my childhood working in the store, which catered primarily to Korean-American customers. Business was conducted in Korean. Even though they worked long hours, seven days a week, my parents were active in the Korean-American community. Their personal experiences, work ethic, and commitment to community service have inspired me to vigorously enforce the federal civil rights laws, so that we all can have an equal opportunity to achieve the American dream.

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

In addition to my longstanding commitment to serving my country as a government attorney, my service as a Special Advisor to the Assistant Secretary of the Army (Manpower and Reserve Affairs) on No Gun Ri furthered my desire to safeguard civil rights. At that time, the Army Inspector General conducted a review of allegations that hundreds of South Korean civilians were massacred by American servicemembers underneath a railroad bridge in No Gun Ri, South Korea. I met survivors of the No Gun Ri incident and listened to their chilling description of an aerial attack and gunshots by American soldiers. Tragically, one woman described how she lost an eye during the incident and how she is reminded daily of the tragedy each time she cleans her glass eye. During the course of the investigation, I learned about many other horrific instances of untimely deaths, injuries, lost family members, and other significant hardships suffered by Korean-American citizens, American servicemembers, and my own family members who had lived through the Korean War. I was awarded the Army's Outstanding Civilian Service Medal for my service.

My family's experience and my involvement in the No Gun Ri investigation inspired me to become actively involved in the Korean-American Coalition (KAC), a non-partisan organization that was formed in the wake of the Rodney King riots that damaged Korean businesses in Los Angeles, California. In 2001, I volunteered to serve on KAC (Washington D.C. Area Chapter)'s Board of Directors and was elected to serve as its Executive Vice President. Among other things, KAC hosted community meetings on current issues and conducted voter registration and citizenship drives. For example, in the aftermath of September 11, 2001, KAC convened a public meeting of various organizations to show our support to the Muslim and Arab community in the hopes that they would not suffer the discrimination that Asian Americans suffered during World War II. The KAC nominated me to sit on a local school board's Human Rights Advisory Committee, where I served from 2001-2005. One of the first issues we addressed was post-9/11 backlash in the public schools.

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When the opportunity arose to work in the Civil Rights Division, I was particularly interested in combining my skills as a government attorney, my personal experiences growing up in an immigrant family, and my community service. My time at the Division has been much more rewarding professionally and personally than I could have imagined.

18. Since 2001, there have been seven different Assistant Attorney Generals for Civil Rights: (1) Ralph F. Boyd, Jr., (2) J. Michael Wiggins, (3) R. Alexander Acosta, (4) Bradley J. Schlozman, (5) Wan J. Kim, (6) Rena J. Comisac, and (7) you. Three were Senate-confirmed and the others were not. None of the seven stayed in the job for longer than two years.

a. **In your opinion, why has there been so much turnover in the leadership of the Civil Rights Division over the past seven years?**

Answer: I do not know.

b. **Did any of your six predecessors have any civil rights law enforcement or policy experience prior to their service in the Civil Rights Division? If so, please indicate the nature of that experience.**

Answer: While I am generally familiar with my predecessors, I do not have detailed knowledge of their prior experiences.

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Senate Judiciary Committee Hearing
"Executive Nomination" – Grace C. Becker
Tuesday, March 11, 2008

Responses to Questions Submitted by U.S. Senator Russell D. Feingold to Grace C. Becker

1. At your nomination hearing, you were asked several questions about the Civil Rights Division's hiring process – a process that you said has "worked very successfully" and that you "do not see any need to change." You responded to these questions with general statements that political considerations are not taken into account and that the process is "collaborative." Given the widespread reports of the politicization of hiring within the Department, more specific answers are necessary.

   a. Are there, in fact, established procedures for hiring within the Civil Rights Division, or does hiring proceed on an ad hoc, case-to-case basis?

   b. If there are established procedures:

      i. Do the procedures vary from section to section, or is there a uniform set of procedures for the Division?

      ii. Have the procedures been put in writing? If so, please provide any written statement(s) of the procedures along with your answers. If the procedures have not been put in writing, please detail the means by which the relevant people have been made aware of them, and explain how the Division ensures that the procedures are accurately and consistently communicated in the absence of written direction.

      iii. To the extent not covered in any written statement(s) of the procedures that you provide, please specify each of the steps that occurs in the hiring process, from the advertising of an open position to the making of an offer. For each step, please identify the participants (e.g., line attorneys, deputy chiefs, chiefs, deputy assistants, etc.) and state whether they are career employees or political appointees. If there are steps in which career employees may participate at their option (as you suggested in the hearing), please state whether and how the relevant career employees are informed of this option.

Answer (a – b): Throughout my tenure, candidates for career attorney positions have been hired through a collaborative process. They are interviewed by career attorneys (including, but not limited to, career Section Chiefs) and the Deputy Assistant Attorney General responsible for supervising the relevant section on behalf of the Office of the Assistant Attorney General. A Deputy Assistant Attorney General can be either a career or a non-career Senior Executive Service attorney. On March 31, 2008, I initiated a

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review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

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

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

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

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

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

2. You testified that you are not aware of the 2002 change in the Division's hiring practices. It was widely reported that this change resulted in the near total exclusion of career employees from hiring decisions. Department employees also

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report that upper-level career attorneys, such as section chiefs, were brought back into the process in 2007, but that line attorneys' role in the process has remained much smaller than it was before 2002. Many current and former employees of the Department have called for an increase in participation by line attorneys in order to restore their pre-2002 role. Will you agree to implement this change?

Answer: On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

3. I understand that there are separate procedures for hiring attorneys for the Honors Program. In April 2007, the Washington Post reported that, in response to complaints by career attorneys and increasing scrutiny by Congress and the media, the Justice Department was "removing political appointees from the hiring process" for Honors Program Attorneys, and would "return[] control of the Attorney General's Honors Program and the Summer Law Intern Program to career lawyers in the department after four years during which political appointees directed the process." This planned change in procedures was reportedly announced through an internal Department memorandum.

   a. Did the Justice Department implement the change reported by the Post? Specifically, are political appointees currently involved in the hiring of Honors Program attorneys?

Answer: On April 26, 2007, the Department of Justice issued new guidelines with respect to the hiring process for the Attorney General's Honors Program. (Please see the attached new guidelines.) The new guidelines remove any political appointees from the Attorney General's office, Deputy Attorney General's office, or Associate Attorney General's office from participation in this hiring process. Under the guidelines, the hiring process is now delegated to the individual DOJ components and to a working group that comprises career employees from the Office of Attorney Recruitment and Management (OARM), which has administrative oversight of all career attorneys within the Department, and representatives from the various DOJ components.

   b. If the hiring process for Honors Program attorneys differs from the hiring process for lateral hires, please provide the information requested in Question 1.b.iii for the Honors Program hiring process.

Answer: The Attorney General's Honors Program is administered and promoted by OARM, which manages the applications and conducts the initial screening process to make certain that all applicants are eligible for participation in the Honors Program. Applicants are then referred to components (such as the Civil Rights Division) based on the applicant's stated preference. The applications are reviewed by each component. It is my understanding that in 2007, the applications forwarded to the Civil Rights Division were reviewed only by career attorneys, and the selected applicants were interviewed by career employees of the Division. A committee of career employees determined which candidates received offers of employment.

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4. At your nomination hearing, Senator Schumer asked you whether you discussed the Indiana voter ID case with Assistant Attorney General Alice Fisher, who heads the Criminal Division. You responded that you "can't get into pre-deliberative discussions."

   a. Is it your contention that this information is protected from disclosure by the deliberative process privilege? If so, please substantiate the assertion of privilege with the information specified in *Landry v. F.D.I.C.*, 204 F.3d 1125 (D.C. Cir. 2000). If not, please explain the basis for your refusal to answer the question.

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

Landry applies to the assertion of privilege in civil litigation. My attempt to answer the Committee's questions in a manner consistent with Executive Branch confidentiality interests does not entail an assertion of privilege in the context of civil litigation.

   b. Even assuming that the deliberative process privilege could apply to factual information such as the identity of participants in agency deliberations, the case law is clear that qualified executive privileges, including the Presidential communications privilege and the deliberative process privilege, must yield in the face of Congress's need to do its job. Do you agree that Congress has a legitimate interest, as part of its duty to offer advice and consent on nominees for top executive positions, in knowing the basis for your decision to sign and submit an amicus brief in this controversial case?

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

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

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

> Indiana determined that it faced a serious problem of actual and potential election fraud. In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting of ballots by nonresidents. *Pabey* v. *Pastrick*, 816 N.E.2d 1138, 1145, 1153. The Indiana Supreme Court found that the widespread fraud had rendered the election results "inherently deceptive and unreliable." *Id.* at 1151.
>
> At the same time, the State discovered that its voter registration rolls were highly inflated, thus creating a risk of further voter fraud. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%,

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> including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. J.A. 312-313.
>
> Shortly thereafter, Indiana responded to those and other concerns by enacting a number of election reforms. In particular, Indiana enacted Senate Enrolled Act No. 483 (Voter ID Law), Pub. L. No. 109-2005, which, in order to deter voter fraud, requires those who vote in-person to present photo identification, issued either by the United States or the State of Indiana. See Ind. Code 3-11-8-25.1(c) and 3-5-2-40.5; Pet. App. 106. On the same day, the legislature also placed new restrictions on absentee voting and how absentee ballots are handled, prohibiting the practice of pre-printing the absentee ballot application with certain information, such as the address (if different from the applicant's), party affiliation, or reason for voting absentee. Ind. Pub. L. No. 103-2005 § 4; Ind. Code 3-11-4-2(c), (d).

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

In addition, the facial nature of the challenge in *Crawford* is itself significant. As the lower courts stressed, the plaintiffs in *Crawford* failed to "introduce[] evidence of a single, individual Indiana resident who will be unable to vote as a result of [the Voter ID law,] or who will have his or her right to vote unduly burdened by its requirements." *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, as stated in the Department's brief, "[f]or the 99% of voters in Indiana who already have a photo ID, the law requires no more than that the voter present the ID at the polls. For the less than 1% of Indiana voters who do not yet have an ID, the State offers them such an ID free of charge. And for those who are most likely to find it difficult to obtain even a free ID, state law provides alternative methods of voting that do not require presenting identification." Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita,* No. 07-25 (U.S. Dec. 10, 2007). If the mere possibility that some unspecified voter may not possess the requisite form of identification were enough to invalidate a statute on its face, then it would obviously be more difficult to defend HAVA. It may be that certain Indiana voters could establish that they are nevertheless in fact burdened by the Indiana law. As the Department made clear in its brief, any such individuals could bring an as-applied challenge to the law in such circumstances. *Id.* at 11. Nothing in the Department's position in *Crawford* would preclude the law from being declared unconstitutional on an as-applied basis in a concrete setting where the requisite elements of the constitutional claim are met.

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the

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Department's longstanding practice for determining whether to file an *amicus* brief in a case. Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of the United States' position in *Crawford,* the Civil Rights Division will investigate, and take any appropriate enforcement action, if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner.

5. At your nomination hearing, I asked you whether the Civil Rights Division's efforts to vitiate settlements reached under the previous Administration were appropriate. You responded that you were not aware of this happening during your tenure as a manager, but that any reversal in Department policy should be an "exceptional situation."

   a. Given that different administrations inevitably take different positions on many issues, I assume that your reference to an "exceptional situation" implies something more than mere disagreement by one administration with a position taken by a prior administration. Is this assumption correct?

Answer: I am committed to ensuring that the Division's law enforcement decisions are guided by the facts and the law. In evaluating whether a particular settlement should be modified, the Department conducts a thorough analysis of the facts and any applicable law, including any changes in the facts or the law that may have occurred since the time the settlement was reached. I am prepared to take any appropriate action to ensure that all federal civil rights laws are enforced on behalf of all Americans.

   b. The Department of Justice has attempted to vitiate civil rights settlements intended to benefit women or minorities, or has otherwise reversed position on a civil rights issue in a manner adverse to women or minorities, in the following high-profile cases (among others):

      - *University of Michigan diversity in admissions cases.* In 1999, in two cases challenging the University of Michigan's use of race as a factor in admissions, the Department filed amicus briefs in district court in support of the University. The briefs argued that the University "should have the flexibility to develop and implement admissions programs that consider an applicant's race or ethnic background," and asserted, citing the analyses of three experts, that "[w]ithout consideration of racial or ethnic diversity in higher education admissions . . . it would not be uncommon to have college or university classrooms with few, if any, minority students." In 2003, when these same cases were before the Supreme Court, the Department filed another set of amicus briefs, this time in support of the plaintiffs. In these briefs, the Department argued that the University was required to employ "race-neutral" means, and that "[t]he district court's conclusion that '[i]f race were not taken into account, the probability of acceptance for minority applicants would be cut dramatically'" – the very

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same conclusion that the Department had urged upon the court in 1999 – "is plainly mistaken."

- *United States v. New York City Board of Education.* In 1996, the Justice Department filed suit against the New York City Board of Education for discriminating against women and minorities in recruiting and hiring custodians in public schools. In 2000, the case was settled through a court-approved consent decree that required the City to extend various job benefits to approximately 60 victims of discrimination. White male custodians challenged the settlement, and in 2002, the Civil Rights Division – now under a new administration – not only refused to defend the settlement awards with respect to the majority of beneficiaries, but actively sided with the challengers.

- *USA v. City of Buffalo.* Three decades ago, the City of Buffalo was found liable for discrimination in hiring for its police department. Under an order that the Department of Justice drafted, the City was required to fill 50% of new positions with minorities until the composition of the police force matched the City's labor force. When that point was reached, a new order was entered in 1989 requiring the City to adopt an "applicant flow" hiring model that would ensure the continued absence of discriminatory impact. For thirteen years, the Department supported the "applicant flow" order and opposed employment tests that the City had not shown to be valid. In 2002, however, the Department reversed position. It argued that the continued use of applicant flow hiring was unconstitutional because "[t]he effects of the City's past hiring discrimination were long ago remedied," and it asked the court to dismiss the lawsuit even though the City had admittedly not demonstrated the validity of the employment test it would be using instead.

- *Adam's Mark settlement.* In 2000, the Justice Department entered into a consent decree with the Adam's Mark hotel chain designed to remedy the chain's discriminatory practices. The consent decree and the requirements it imposed were to remain in place until November 2004, but in March 2002, the Justice Department announced that the Assistant Attorney General for the Civil Rights Division had offered to terminate the consent decree early if the hotel chain complied with the requirements of the Consent Decree over the following nine months – a meaningless prerequisite, since the hotel chain was already obligated to comply with these requirements. After a torrent of negative publicity, the hotel chain announced it would not pursue the offer.

Please familiarize yourself with the Department's filings in these cases, and then answer the following question for each case: Do you believe that an "exceptional situation" existed that justified the reversal of position, and if so, what was the exceptional situation?

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Answer: I am committed to ensuring that the Division's law enforcement decisions are guided by the facts and the law. In evaluating whether a particular settlement should be modified, the Department conducts a thorough analysis of facts and any applicable law, including any changes in the facts or the law that may have occurred since the time the settlement was reached. Although I did not work on these cases, I am prepared to take any appropriate enforcement action to ensure that all federal civil rights laws are enforced on behalf of all Americans.

6. The Department of Justice is charged with enforcing Section 7 of the National Voter Registration Act, which requires states to designate all offices that provide public assistance as voter registration agencies. Last August, the Department sent letters of inquiry to 18 states regarding their compliance with the NVRA.

   a. What actions have been taken to follow up on those letters?

Answer: It is my understanding that last year, the Section sent letters to approximately 18 states regarding their compliance with Section 7. We continue to monitor the compliance of all covered states with the NVRA and will gather additional information from states and take action as appropriate. Our efforts have, in some instances, resulted in compliance without the need to resort to litigation. For example, the State of Nebraska recently took action to comply with Section 7 as a result of the Department's inquiry. In a letter to the State last year, the Department suggested that Nebraska may have to take steps to comply with Section 7, and on March 10, 2008, Nebraska's Governor signed into law a bill designating additional selected State offices as "voter registration agencies" under Section 7 of the NVRA. In addition, officials from the State of Iowa recently reported that a similar bill was introduced in response to the Department's enforcement efforts and is currently pending in the State legislature.

   b. While it is encouraging that these letters were sent, the fact remains that the Department has brought only one Section 7 case since 2001, despite reports of widespread Section 7 violations. Will you ensure that the Civil Rights Division actively and robustly enforces Section 7 of the NVRA if you are confirmed?

Answer: I am committed to vigorously enforcing all of the statutes within the Division's jurisdiction.

Let me clarify that, in addition to the voluntary compliance described in Question 6.a., the Department has brought two lawsuits under Section 7 since 2001: *United States v. State of Tennessee* (2002) and *United States v. State of New York* (2004).

7. Section 2 of the Voting Rights Act prohibits practices that result in a denial or abridgement of the right to vote based on race, color, or membership in certain language-minority groups. In the last five years, the Voting Rights Section has filed only seven Section 2 cases. By comparison, during the last two years of the Clinton

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administration, the Voting Rights Section filed fourteen Section 2 lawsuits. Attorney General Mukasey testified before this Committee that he would vigorously enforce Section 2. If you are confirmed, what specific steps will you take to make good on the Attorney General's pledge?

Answer: I am fully committed to vigorous enforcement of the Voting Rights Act on behalf of all Americans.

In the time that I have been overseeing the Voting Section, I have approved the filing of two cases under Section 2 of the Voting Rights Act, one on behalf of African-American voters and the other on behalf of Hispanic voters. In March 2008, the Voting Section filed and resolved a lawsuit under Section 2 against the Georgetown County, South Carolina, Board of Education on the grounds that the at-large method of electing school board members unlawfully diluted the voting strength of African-American voters in Georgetown County. No African-American candidate has won a school board election during the last three election cycles. The current school board is all white, although African Americans comprise approximately 38% of the population of Georgetown County. The consent decree creates seven single-member districts and two at-large seats on the nine-member school board, and in three of the new single-member districts, African Americans will constitute a majority of the citizen age-eligible population. This settlement ensures that African-American voters in Georgetown County will have the opportunity to elect school board members of their choice.

In a separate matter, the Department filed a complaint and a consent decree against the Osceola County, Florida, School Board on April 16, 2008, alleging that the existing district boundaries for electing members of the school board violate Section 2 by discriminating against Hispanic voters. The consent decree provides for new district lines in which Hispanics are a majority of the registered voters in one district. This is the third lawsuit regarding Osceola County, Florida, brought by the Voting Section during this Administration. The first alleged the County violated Sections 2 and 208 by discriminating against Hispanic voters through hostile treatment at the polls, failing to provide adequate language assistance, and not permitting Hispanic voters to bring assistors of their choice into the polling places. The second lawsuit alleged the County's method of electing its Board of Commissioners violated Section 2 by diluting the voting strength of Hispanic voters.

Additionally, on February 21, 2008, the United States filed a brief as *amicus curiae* in *Riley v. Kennedy*, which is pending in the Supreme Court of the United States on direct appeal from the U.S. District Court for the Middle District of Alabama. The Civil Rights Division previously had interposed an objection on behalf of African Americans pursuant to Section 5 of the Voting Rights Act regarding a change in the method of filling vacancies on the Mobile County Commission from special election to gubernatorial appointment. The district court confirmed that this voting change was subject to preclearance by the Department of Justice. On appeal, the United States continues to maintain that this change cannot be implemented unless it is precleared.

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Also during my time overseeing the Voting Section, the Section has interposed an objection under Section 5 of the Voting Rights Act on behalf of Native Americans. On February 11, 2008, we objected to a proposed plan submitted by Charles Mix County, South Dakota, where 28.3% of the residents are Native American, on the ground that the proposed change had a discriminatory purpose. Specifically, the Voting Section's preclearance review of this submission revealed that the voting changes were proposed to intentionally dilute the voting strength of Native-American voters. Moreover, the Section's review found a history of voting discrimination against Native Americans in Charles Mix County and evidence of conduct and comments by local elected officials that showed a racially discriminatory intent, all of which formed the basis for interposing an objection in this case.

8. In a recent report, the United Nations Committee on the Elimination of Racial Discrimination expressed concern that racial, ethnic and national minorities in the U.S. are disproportionately concentrated in poor residential areas which provide sub-standard housing conditions. An important tool for remedying these conditions is the ability to bring a "disparate impact" claim under the Fair Housing Act. Yet, in 2003, DOJ informed the Department of Housing and Urban Development that it would not pursue disparate impact cases involving housing discrimination. Furthermore, in the past four years, the number of fair housing enforcement cases filed overall has decreased by 29%, while the number of cases brought to combat discrimination based on race has decreased by 43%.

   a. Will you discontinue the current policy against pursuing disparate impact housing cases? If not, please provide in detail the reason(s) why you intend to support the continuation of this policy. If you take the position that disparate impact claims are not authorized under the Fair Housing Act, please explain how you justify this position, given that all the U.S. Circuit Courts of Appeal to address the issue – including the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits – have reached the opposite conclusion.

Answer: The Civil Rights Division does not have a policy against pursuing disparate impact discrimination cases. The Housing and Civil Enforcement Section, the component of the Division responsible for enforcing the Fair Housing Act, considers and relies upon evidence of "disparate impact" in applicable cases. I am not aware that the Section has ever filed a case based solely upon a "disparate impact" theory.

   b. What additional (or alternative) steps do you intend to take, if any, to improve the Department's record on combating race-based housing discrimination?

Answer: If I am confirmed, I intend to continue vigorously enforcing the Fair Housing Act on behalf of all Americans. Altogether, in Fiscal Year 2007, the Housing and Civil Enforcement Section filed 33 lawsuits and obtained over $7 million in monetary relief.

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The Division, under my supervision, has been actively looking for housing discrimination cases. Under Operation Home Sweet Home, an Attorney General initiative started two years ago to expose and eliminate housing discrimination, the Division conducted more than 500 paired tests in FY 2007. This is an all-time high number of tests, surpassing the prior record by approximately 20%. As a result of this initiative, in September 2007, the Division filed its first case ever on behalf of Asian victims in Lowell, Massachusetts, based upon evidence developed through its fair housing testing program. The matter was settled in January 2008 for $158,000. In January 2008, we also filed a complaint against an apartment complex in the Detroit area that our testing program showed was discriminating against African-American renters.

In addition to the cases that we bring, Operation Home Sweet Home has had a deterrent effect on housing discrimination. We have found that some landlords, after receiving repeated visits from our testers, alter their behavior to conform to the fair housing laws. Thus, as public awareness of our fair housing testing program grows, it has discouraged housing discrimination by those who might otherwise engage in it.

The Division enjoyed significant success in Calendar Year 2007 in its pattern or practice race discrimination cases under the Fair Housing Act. For example, on March 30, 2007, a court issued an order in *United States v. Matusoff Rental Company* (S.D. Ohio) finding that the defendant had engaged in a pattern or practice of discrimination on the basis of familial status and race against African Americans and requiring him to pay a total of $405,000 in compensatory damages and $130,000 in punitive damages to 26 individual victims of discrimination. On August 29, 2007, a court entered a consent order for $725,000 resolving *United States v. General Properties Company, LLC* (E.D. Mich.), in which the Division alleged that the owners and operators of an apartment complex in Livonia, Michigan, had discriminated against African-American prospective tenants.

9. In 2000, Attorney General Reno publicly issued a nearly 400-page report with every conceivable piece of data about federal death penalty-eligible cases, down to the district level. This included, by district, a breakdown of what the U.S. Attorney and Capital Case Review Committee recommended and what the Attorney General decided. It also included breakdowns by race of the defendant and of each of the victims in a case. This comprehensive report was extremely helpful back in 2000, and revealed possible racial disparities in the implementation of the federal death penalty.

   I have asked Department officials repeatedly over the past year to consider issuing a similarly detailed report covering the time period since 2000. This would give the Judiciary Committee and others an opportunity to understand how the federal death penalty is being implemented, and it would give the Department an opportunity to demonstrate its commitment to transparency about its death penalty work. I have yet to receive an answer. Given the clear civil rights implications of possible racial disparities in the implementation of the federal death penalty, will you advocate within the Justice Department for the public release of a follow-up report to the 2000 Reno report?

Answer: This is an issue that is handled by other components of the Department of Justice. I appreciate the civil rights implications and, if confirmed, will take appropriate action in my role as Assistant Attorney General for the Civil Rights Division.

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

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

Questions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Questions:

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

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

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

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

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

Questions:

a. Have you set specific enforcement priorities for each Section in the Division? If so, what are they?

b. Please explain in detail what you see as the Division's most important priorities and why.

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

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

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

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

Questions:

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

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

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

- Invest a minimum of $3.5 million in special financing program for residential and Community Reinvestment Act small business loans;
- Commit at least $375,000 in targeted advertising;

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- Invest $500,000 to provide credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses of African-American and Hispanic areas and sponsor programs offered by community or governmental organizations engaged in fair lending work;
- Open or acquire at least two full service offices within designated African-American neighborhoods;
- Expand and provide full lending services at a branch in a majority Hispanic neighborhood;
- Provide the same services offered at its majority white suburban locations to all branches regardless of their location;
- Train employees on the requirements of the FHA and ECOA; and
- Keep records and provide reports to the United States, as well as other remedial relief.

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

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

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

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

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

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

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

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

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

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

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

Questions:

a. How do you account for the Division's failure to protect the rights of African Americans and Latinos?

b. Do you agree that combating discrimination against African American and Latino workers should be a high priority for the Division? If you are confirmed, will you ensure that the Division's enforcement efforts target the most significant civil rights problems?

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

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

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

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

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

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

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

Questions:

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

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

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

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

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

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

Questions:

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

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

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

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

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

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

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

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

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

Questions:

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

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

Under my leadership, EOS has continued its important work of ensuring that equal educational opportunities are available on a non-discriminatory basis. We remain active in pursuit of the Section's mission and continue to pursue desegregation as a goal. To ensure that districts comply with their obligations, EOS actively reviews these desegregation cases where the United States is a party to monitor issues such as student

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assignment, faculty and staff assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources.

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

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

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

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

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

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

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desegregation cases to monitor issues such as student assignment, faculty and staff assignment and hiring, transportation policies, extracurricular activities, the availability of equitable facilities, and the distribution of resources.

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

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

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

Questions:

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

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

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

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

> Indiana determined that it faced a serious problem of actual and potential election fraud. In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting of ballots by nonresidents. *Pabey* v. *Pastrick*, 816 N.E.2d 1138, 1145, 1153. The Indiana Supreme Court found that the widespread fraud had rendered the election results "inherently deceptive and unreliable." *Id.* at 1151.
>
> At the same time, the State discovered that its voter registration rolls were highly inflated, thus creating a risk of further voter fraud. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. J.A. 312-313.
>
> Shortly thereafter, Indiana responded to those and other concerns by enacting a number of election reforms. In particular, Indiana enacted Senate Enrolled Act No. 483 (Voter ID Law), Pub. L. No. 109-2005, which, in order to deter voter fraud, requires those who vote in-person to present photo identification, issued either by the United States or the State of Indiana. See Ind. Code 3-11-8-25.1(c) and 3-5-2-40.5; Pet. App. 106. On the same day, the legislature also placed new restrictions on absentee voting and how absentee ballots are handled, prohibiting the practice of pre-printing the absentee ballot application with certain information, such as the address (if different from the applicant's), party affiliation, or reason for voting absentee. Ind. Pub. L. No. 103-2005 § 4; Ind. Code 3-11-4-2(c), (d).

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

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

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

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the Department's longstanding practice for determining whether to file an *amicus* brief in a case. Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of the United States' position in *Crawford,* the Civil Rights Division will investigate, and take any appropriate enforcement action, if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner.

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

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

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

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

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

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

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

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

Answer: See response to Question 9.a.

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

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Questions:

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

Answer: See response to Question 9.a.

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

Questions:

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

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

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

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

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

Questions:

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a. Are the first line career professionals who examine the evidence allowed to include in their memos to you their specific recommendations on whether to approve a voting change under Section 5 of the Voting Rights Act?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. How many investigations has the Division pursued since 2001 involving potential violations of Section 1971(b) of the Civil Rights Act of 1957[,] which prohibits threatening, intimidating or coercing voters?

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

Answer (b – c): It is my understanding that the Division has opened approximately 37 investigations that include allegations of intimidation, threats, or coercion since 2001. These investigations implicate multiple statutes, including Section 11(b) and Section 1971(b). The Division has brought only three lawsuits, all involving non-governmental defendants, under Section 11(b) in its entire history. The only relief available under Section 11(b) is declaratory and injunctive relief to bar similar future misconduct, which can also be obtained under Section 2 of the Voting Rights Act if the misconduct has a racially discriminatory intent or result.

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

Answer: It is my understanding that the Division has brought only three lawsuits, all involving non-governmental defendants, under Section 11(b) in its entire history. The only relief available under Section 11(b) is declaratory and injunctive relief to bar similar future misconduct, which can also be obtained under Section 2 of the Voting Rights Act if the misconduct has a racially discriminatory intent or result.

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

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

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

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

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

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

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

Questions:

a. Do you agree that the Department's commitment to Section 5 should include the resources necessary to review Section 5 submissions within the legal deadline? Why have you allowed the number of analysts to drop so sharply?

b. The problem will only grow worse as the 2010 Census approaches. After each Census, states adjust their election districts, state-wide redistricting efforts, leading to an increase in the number of submissions to the

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

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

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

Questions:

a. Do you agree that these allegations of race discrimination and poor morale in the Voting Section raise serious concerns that should be addressed?

b. What have you done to improve the morale of the Section 5 unit and to address the Equal Employment Opportunity complaints filed under Mr. Tanner's tenure?

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

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

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

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

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

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

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

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

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

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

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

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

Questions:

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

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

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

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

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

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

21. **Questions:**

a. Have you ever suggested a candidate be considered for hire into a career position, who had not applied through the regular application process but had been referred to you by Wan Kim?

b. Did you ever suggest considering hire of an applicant who had been referred to you by Bradley Schlozman?

c. Did you ever suggest considering hire of an applicant who had been referred to you by any other former or current political appointee, including Wan Kim, Bradley Schlozman, or any other former Assistant Attorney General? If yes, please explain in detail the circumstances, who made the referral, and the reasons you believed it was appropriate to consider applicants who had been referred outside the regular application process?

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

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

Questions:

a. What is the basis for your refusal to answer these questions?

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

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

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

With respect to the questions posed at the hearing, I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

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

Questions:

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a. Has anyone from the Inspector General's office or the Office of Professional Responsibility spoken with you at any time about the investigation?

b. Have you reached out to the investigation to volunteer information?

c. Is it your position that you do not possess any relevant information?

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

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

Questions:

a. Do you acknowledge that there have been problems in the Civil Rights Division in recent years? If so, what have you found to be the most serious problems?

b. Please describe the steps you have taken to investigate these problems.

c. Please describe what you have found and the steps you have taken to remedy these problems.

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

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

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

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

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

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

Answer: I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

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

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In addition, on March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary. If the final report of the review includes recommendations, I will ensure to the full extent of my authority that any appropriate actions are taken.

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

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

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

Questions:

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

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

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

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

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

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

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

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

Questions:

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

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

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

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

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

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

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

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Responses to Questions of Chairman Patrick Leahy
For Grace Chung Becker
Nominee for Assistant Attorney General of the Civil Rights Division
Submitted March 25, 2008

1. Your Senate questionnaire lists only one case where you served as lead trial counsel and that was a public corruption case that did not involve the enforcement of a civil rights statute. You also supervised the prosecution of, or worked closely with career attorneys in, only four cases where a traditional civil rights statute was involved. In light of your limited experience in traditional civil rights litigation, what prepares you to lead the Civil Rights Division, our Nation's foremost civil rights law enforcement agency?

Answer: My significant experience in litigation, management, and coordination, as well as in civil rights, has prepared me to lead the Civil Rights Division. For over two years, first as Deputy Assistant Attorney General and then as Acting Assistant Attorney General for the Civil Rights Division, I have become very familiar with the remarkable work this Division does on behalf of victims of discrimination. As a manager, I have worked closely with attorneys as they investigated matters, litigated cases, and negotiated settlement agreements in the United States' enforcement of civil rights laws involving, among other things, law enforcement misconduct; hate crimes; human trafficking; educational opportunities; the civil rights of institutionalized persons in prisons, jails, nursing homes, mental hospitals, and facilities for the developmentally disabled; housing and employment discrimination; fair lending; voting rights; and disability rights. The Senate questionnaire responses describe only eight illustrative civil rights matters (pp. 10-13, 19-20) and were not intended to reflect every civil rights case on which I have worked. I have been supervising hundreds of civil rights matters involving numerous statutes during my tenure at the Division. My strong working knowledge of the Civil Rights Division's role and responsibilities in federal law enforcement, as well as its day-to-day operations, has prepared me to handle litigation questions that may be presented to an Assistant Attorney General.

My litigation background has prepared me to bring a broader perspective to ongoing civil rights litigation that complements the subject matter expertise of many litigators within the Division. I have served as a career prosecutor in the United States Department of Justice in the Criminal Division and the United States Attorney's Office for the Eastern District of Virginia and as a litigator at the law firm of Williams and Connolly, LLP. I have personally handled dockets of hundreds of cases, coordinated significant international narcotics investigations, litigated bench and jury trials, and handled federal appeals in the First, Fourth, Ninth, and District of Columbia Circuits. In addition, I served as Special Advisor to the Assistant Secretary of the Army, who supervised the Army Inspector General's review of allegations that American servicemembers killed hundreds of South Korean civilians underneath a railroad bridge in No Gun Ri, South Korea, during the Korean War. I was awarded the Army's Outstanding Civilian Service Medal for my service. This experience in historical investigations has served to enhance my judgment as I supervise the Criminal Section and work with the FBI on the FBI's Cold Case Initiative, which re-opened approximately 100 matters from the civil rights era.

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My background in management has also helped to prepare me to lead the Division. I graduated *magna cum laude* from the Wharton School with a concentration in management. In addition to my academic training, I also have managerial experience supervising hundreds of employees as Deputy Assistant Attorney General and Acting Assistant Attorney General. Thus, I am prepared for the management and administrative challenges that may arise in the Division.

My experience working in all three branches of the federal government has helped to prepare me to lead the Division in the significant coordination efforts that are required to comprehensively enforce the federal civil rights laws. My federal experience includes two clerkships under Judge James Buckley of the United States Court of Appeals for the D.C. Circuit and Judge Thomas Penfield Jackson of the United States District Court for the District of Columbia. In addition to the experiences already mentioned, I served as Associate Deputy General Counsel in the United States Department of Defense, Counsel to the United States Senate Judiciary Committee, and Associate General Counsel at the United States Sentencing Commission. This broad base of federal government experience has provided me with a familiarity and appreciation of the distinct, yet complementary, roles of various offices and has strengthened working relationships with other federal agencies in a manner that seeks to respect the equities of multiple components while serving our greater common interest of representing the United States of America.

2. In the 2004 primary elections, a former District Attorney in Waller County, Texas published a series of letters in a local newspaper threatening students that state residence requirements barred them from participating in elections at the polling site where they attend college, a nearby historically black university. In 2006 anti-immigrant activists aggressively intimidated Latino voters in Tucson, Arizona and a cross burned in Grand Coteau, Louisiana on the eve of a racially heated and hotly contested mayoral election. Given these recent troubling events, what do you believe is the proper role of the Civil Rights Division with respect to preventing and responding to voter suppression tactics like the recent ones experienced in Texas, Arizona, and Louisiana?

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

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

Such extensive efforts require substantial planning and resources. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. The Department takes a proactive approach to identifying locations where

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problems may occur. To that end, Department officials will continue to meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general election to provide a forum for discussion of State and local officials' concerns.

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

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

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

Finally, I will ensure that the Division will continue its outreach to organizations and groups that advocate on behalf of minority voters. The Division will also continue its outreach to State and local election officials to advise them of the requirements of federal law and urge their voluntary compliance.

3. Almost two years ago, when the Senate reauthorized the expiring provisions of the Voting Rights Act by a unanimous vote of 98-0, the House and Senate Judiciary Committees heard an abundance of evidence that discrimination in voting remains a continuing problem that has not yet been eliminated. Despite this troubling record, the Civil Rights Division did not authorize a single case alleging discrimination in voting on behalf of African-American voters between 2001 and 2006. Under the Bush Administration, the Voting Section filed only 2 cases alleging minority vote dilution in violation of Section 2 of the Act, filed only a handful of Section 2 cases on behalf of Hispanic Americans, and has not brought a single case on behalf of Native American voters for the entire administration.

    A. Are you concerned that investigating and prosecuting cases alleging discrimination against minority voters has not been a high priority for this Administration?

Answer: I am fully committed to vigorous enforcement of the Voting Rights Act on behalf of all Americans. The Administration strongly supported reauthorization of the Voting Rights Act, and the Department is currently vigorously defending the Act's constitutionality in court.

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B. If confirmed, will you commit to bringing cases on behalf of all minority communities, including African Americans, Latinos, and Native Americans, in order to enforce Section 2 of the Voting Rights Act?

Answer: If confirmed, I am fully committed to vigorous enforcement of the Voting Rights Act on behalf of all Americans.

In the time that I have been overseeing the Voting Section, I have approved the filing of two cases under Section 2 of the Voting Rights Act, one on behalf of African-American voters and the other on behalf of Hispanic voters. In March 2008, the Voting Section filed and resolved a lawsuit under Section 2 against the Georgetown County, South Carolina, Board of Education on the grounds that the at-large method of electing school board members unlawfully diluted the voting strength of African-American voters in Georgetown County. No African-American candidate has won a school board election during the last three election cycles. The current school board is all white, although African Americans comprise approximately 38% of the population of Georgetown County. The consent decree creates seven single-member districts and two at-large seats on the nine-member school board, and in three of the new single-member districts, African Americans will constitute a majority of the citizen age-eligible population. This settlement ensures that African-American voters in Georgetown County will have the opportunity to elect school board members of their choice.

In a separate matter, the Department filed a complaint and a consent decree against the Osceola County, Florida, School Board on April 16, 2008, alleging that the existing district boundaries for electing members of the school board violate Section 2 by discriminating against Hispanic voters. The consent decree provides for new district lines in which Hispanics are a majority of the registered voters in one district. This is the third lawsuit regarding Osceola County, Florida, brought by the Voting Section during this Administration. The first alleged the County violated Sections 2 and 208 by discriminating against Hispanic voters through hostile treatment at the polls, failing to provide adequate language assistance, and not permitting Hispanic voters to bring assistors of their choice into the polling places. The second lawsuit alleged the County's method of electing its Board of Commissioners violated Section 2 by diluting the voting strength of Hispanic voters.

Additionally, on February 21, 2008, the United States filed a brief as *amicus curiae* in *Riley v. Kennedy*, which is pending in the Supreme Court of the United States on direct appeal from the U.S. District Court for the Middle District of Alabama. The Civil Rights Division previously had interposed an objection on behalf of African Americans pursuant to Section 5 of the Voting Rights Act regarding a change in the method of filling vacancies on the Mobile County Commission from special election to gubernatorial appointment. The district court confirmed that this voting change was subject to preclearance by the Department of Justice. On appeal, the United States continues to maintain that this change cannot be implemented unless it is precleared.

Also during my time overseeing the Voting Section, the Section has interposed an objection under Section 5 of the Voting Rights Act on behalf of Native Americans. On February 11, 2008,

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we objected to a proposed plan submitted by Charles Mix County, South Dakota, where 28.3% of the residents are Native American, on the ground that the proposed change had a discriminatory purpose. Specifically, the Voting Section's preclearance review of this submission revealed that the voting changes were proposed to intentionally dilute the voting strength of Native-American voters. Moreover, the Section's review found a history of voting discrimination against Native Americans in Charles Mix County and evidence of conduct and comments by local elected officials that showed a racially discriminatory intent, all of which formed the basis for interposing an objection in this case.

C. Please identify the number of Section 2 investigations now pending in the Voting Section.

Answer: There are currently twelve active Section 2 investigations pending in the Voting Section.

4. As Acting Assistant Attorney General for the Civil Rights Division, you signed the Administration's amicus brief in *Crawford v. Marion County Election Board*, where you urged the Supreme Court to uphold one of the most burdensome voting laws in the country. You made the troubling argument that Indiana's restrictive law, that requires a photo ID as a condition to vote, is a reasonable measure to prevent election fraud and would not disenfranchise minority communities. Yet, if upheld by the United States Supreme Court, the Indiana law could prevent significant numbers of eligible voters, who lack a government-issued photo ID, from participating in the upcoming general election. The impact would be particularly stark if similar laws were adopted elsewhere throughout the country. It would also disproportionately impact the political participation of voters from minority communities, and other vulnerable populations, who are far less likely than other citizens to possess a qualifying photo ID.

A. At your confirmation hearing, Senator Schumer asked you why the acting head of the Civil Rights Division, a Division with a mission to protect minority participation in voting, would sign a brief seeking to uphold a photo ID law that would disenfranchise minority communities. Although you responded "I can tell you what the Civil Rights' interest was," you did not provide any additional explanation. Now that you have had time to further reflect on your answer, what civil rights interest, beyond the issues identified concerning the Help America Vote Act, justifies you defending Indiana's restrictive law which will infringe on the fundamental right to vote?

Answer: I appreciate the opportunity to supplement the oral response I provided at the hearing. The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion, written by Justice Stevens, determined that Indiana's interests in furthering election modernization, preventing voter fraud, and safeguarding voter confidence justified the burdens imposed on the right to vote. As stated in that opinion: "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Id.* at *8. The concurring opinion stated: "The Indiana photo-

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identification law is a generally applicable, nondiscriminatory voting regulation[.]" *Id.* at *13 (Scalia, J., concurring). "The universally applicable requirements of Indiana's voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not even represent a significant increase over the usual burdens of voting. And the State's interests are sufficient to sustain that minimal burden." *Id.* at *15 (internal citations and quotation marks omitted).

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

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

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

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> At the same time, the State discovered that its voter registration rolls were highly inflated, thus creating a risk of further voter fraud. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. J.A. 312-313.
>
> Shortly thereafter, Indiana responded to those and other concerns by enacting a number of election reforms. In particular, Indiana enacted Senate Enrolled Act No. 483 (Voter ID Law), Pub. L. No. 109-2005, which, in order to deter voter fraud, requires those who vote in-person to present photo identification, issued either by the United States or the State of Indiana. See Ind. Code 3-11-8-25.1(c) and 3-5-2-40.5; Pet. App. 106. On the same day, the legislature also placed new restrictions on absentee voting and how absentee ballots are handled, prohibiting the practice of pre-printing the absentee ballot application with certain information, such as the address (if different from the applicant's), party affiliation, or reason for voting absentee. Ind. Pub. L. No. 103-2005 § 4; Ind. Code 3-11-4-2(c), (d).

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

In addition, the facial nature of the challenge in *Crawford* is itself significant. As the lower courts stressed, the plaintiffs in *Crawford* failed to "introduce[] evidence of a single, individual Indiana resident who will be unable to vote as a result of [the Voter ID law,] or who will have his or her right to vote unduly burdened by its requirements." *Indiana Democratic Party v. Rokita,* 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, as stated in the Department's brief, "[f]or the 99% of voters in Indiana who already have a photo ID, the law requires no more than that the voter present the ID at the polls. For the less than 1% of Indiana voters who do not yet have an ID, the State offers them such an ID free of charge. And for those who are most likely to find it difficult to obtain even a free ID, state law provides alternative methods of voting that do not require presenting identification." Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita,* No. 07-25 (U.S. Dec. 10, 2007). If the mere possibility that some unspecified voter may not possess the requisite form of identification were enough to invalidate a statute on its face, then it would obviously be more difficult to defend HAVA. It may be that certain Indiana voters could establish that they are nevertheless in fact burdened by the Indiana law. As the Department made clear in its brief, any such individuals could bring an as-applied challenge to the law in such circumstances. *Id.* at 11. Nothing in the Department's position in *Crawford* would preclude the law from being declared unconstitutional on an as-applied basis in a concrete setting where the requisite elements of the constitutional claim are met.

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the Department's longstanding

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practice for determining whether to file an *amicus* brief in a case. Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of *Crawford,* the Civil Rights Division will investigate, and take any appropriate enforcement action, if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner.

B. At your hearing, you were asked why you signed the amicus brief in *Crawford,* rather than Alice Fisher, who is head of the Criminal Division which has primary responsibility for prosecuting voter fraud. You responded that you could not comment because "voter fraud issues are primarily handled by the Criminal Division." The Administration's amicus brief in *Crawford,* however, is based on a public record that Indiana's restrictive photo ID law is needed to "prevent[] actual or threatened voter fraud." Given that the amicus brief of the Administration focuses on defending laws premised on the myth of significant in-person voter fraud, please explain why you, and not the head of the Criminal Division, signed the Government's amicus brief arguing in favor of Indiana's voter ID law?

Answer: As I explained in Question 4.A., I signed the brief to defend the constitutionality of the Help America Vote Act (HAVA), for which the Civil Rights Division has enforcement authority. Among other things, HAVA requires voters to provide proof of identification before registering or casting their first ballot. See 42 U.S.C. 1973gg-9, 15511. The Department has a strong interest in enforcing federal election laws enacted by Congress, including the provisions of HAVA, to preserve and protect the voting rights of Americans. Certain Senators and Members of Congress also filed *amicus* briefs based upon their interest in HAVA, specifically putting the proper interpretation of HAVA and its effect on state laws before the Supreme Court.

The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion discussed HAVA as well as another federal statute that the Civil Rights Division enforces, the National Voter Registration Act of 1993 (NVRA). It found that "[b]oth [HAVA and the NVRA] contain provisions consistent with a State's choice to use government-issued photo identification as a relevant source of information concerning a citizen's eligibility to vote." *Id.* at *7.

5. The Justice Department recently undertook a Section 5 preclearance review of a Louisiana program that purports to remove voters identified as dual-registrants – persons registered in more than one state – from Louisiana's registration rolls. Under this program, state officials compare the State's registration rolls with a select number of other states and cities, then target for removal individuals bearing the same first name, last name, and date of birth as voters in other states. I understand that the Justice Department issued a "No Determination" letter regarding this voting change, thus the change has not been pre-cleared or otherwise authorized by the Justice Department.

A. Pursuant to this voting change, Louisiana had already canceled the registration of over 12,000 voters by September 2007. Are you concerned that the Department's

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failure to object to a Louisiana law that effectively cancels the registration of voters from the voting rolls has allowed an unprecleared voting change to be implemented that disenfranchises a significant number of voters?

B. Does DOJ intend to file a Section 5 enforcement action to bar Louisiana from implementing the unprecleared change and to reverse any efforts that Louisiana has taken, to date, to cancel the registration of voters pursuant to this change?

C. Under Section 5, covered jurisdictions bear the burden of proof for showing that their changes are not retrogressive or discriminatory. Where a jurisdiction, like Louisiana in this instance, fails to provide sufficient proof necessary for DOJ to adequately assess whether or not the state has met its burden, it would appear that a Section 5 objection is appropriate. Why did the Department opt to issue a "No Determination" letter in this instance as opposed to interposing an objection?

Answer (A – C): Following Louisiana's initial submission relating to the voter registration maintenance program identified by the question, the Department sent a timely request for more information to Louisiana on November 14, 2007, pursuant to 28 C.F.R. 51.37(a). On December 18, 2007, the Department received a response to this request accompanied by additional information. The Department determined, however, that the information that was provided was incomplete and, on January 30, 2008, wrote to the jurisdiction in a follow-up letter pursuant to 28 C.F.R. 51.37(d), indicating that this was so. That letter expressly noted that, under 28 C.F.R. 51.37(c), a new 60-day period did not and would not commence until a complete response was received. The Department has not issued a "No Determination" letter concerning this matter. The Department's Section 5 review of this matter is ongoing.

D. Between 2001 and 2008, how many "No Determination" letters have been issued by the Civil Rights Division and what steps have been taken to ensure that jurisdictions do not prematurely implement these unprecleared voting changes?

Answer: It is my understanding that 2,700 "No Determination" letters have been issued from 2001-2008.

"No Determination" letters are issued pursuant to 28 C.F.R. 51.35. The "No Determination" category is used primarily when a covered jurisdiction has provided an inappropriate submission as defined by 28 C.F.R. 51.35, which reads as follows: "The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, *e.g.*, § 51.13), the submission of standards, practices, or procedures that have not been changed (see, *e.g.*, §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of section 5 (see, *e.g.*, § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.26(d))."

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Under 28 CFR 51.10, it is unlawful for a jurisdiction to enforce a change affecting voting without obtaining preclearance under Section 5. The Voting Section reminds jurisdictions of their continuing obligations to avoid implementation of any voting changes unless preclearance has been obtained under Section 5. The Voting Section also takes appropriate enforcement action, if necessary, to ensure that jurisdictions do not prematurely implement unprecleared voting changes. See, *e.g.*, *United States v. North Harris Montgomery Cmty. Coll. Dist.*, No. H 06-2488 (S.D. Tex. 2006).

6. During our committee's oversight of the Civil Rights Division, we received testimony about the mass exodus of staff analysts from the Division's office that reviews "pre-clearance" submissions under Section 5 of the Voting Rights Act. Following last June's oversight hearing, then-Assistant Attorney General Wan Kim's answers to our written questions informed us that the Voting Section has only 12 Section 5 analysts currently reviewing preclearance decisions.

   A. With an important election approaching, and an increase likely in redistricting cases after the 2010 census, are you concerned that the decreasing number of Section 5 analysts will undermine the Division's ability to perform its critical Section 5 work?

   B. As Acting Assistant Attorney General of the Civil Rights Division, what steps are you currently taking to address the critical need for more Section 5 analysts?

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

7. Alex Acosta, a previous President Bush appointee to the position to which you have now been nominated, said in a speech in 2005 that the heavy lifting of the civil rights era is over and that the government's job now is to preserve the civil society that people like Martin Luther King Jr. established. It has also been reported that at a July 10, 2007 speech at an Asian Pacific American Bar Association event, you claimed that civil rights issues have progressed from racial discrimination to human trafficking. Given this Committee's bipartisan finding, during the reauthorization of the Voting Rights Act, that race discrimination remains a continuing problem in voting, what assurances can you give us that the Department's traditional mission of combating race discrimination in voting will remain a focus of the Division's top priorities under your leadership?

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Answer: As I stated in my July 10, 2007 speech, "discrimination still persists. And that is what we are committed to fighting on a daily basis in the Civil Rights Division on behalf of all Americans." The July 10, 2007, speech, which has been submitted to the Committee, described a variety of civil rights matters handled by the Division over its 50-year history.

8. You recently defended the United States' record on civil rights enforcement and race discrimination before the United Nations Committee on the Elimination of Racial Discrimination (UN CERD). You testified that this Administration is "committed to continuing its hard work to combat racial discrimination." Yet, according to the 18 independent experts on the U.N. panel, the United States needs to intensify its efforts to combat racial profiling of minorities. These human rights experts also cited other concerns, including the necessity of proving racial intent in racial discrimination cases, existing racial segregation that exists in American schools, and the gross overrepresentation of racial minorities in our prison system as areas requiring improvement. If confirmed, would you commit to incorporating the Concluding Observations and Recommendations of UN CERD into the work of the Civil Rights Division? For example, would you adopt the suggestion that the Division increase the use of "pattern and practice" investigations to combat race discrimination?

Answer: The Committee's concluding observations and recommendations came at the end of a long and productive dialogue between the United States government and the Committee. Last year, the Department of Justice, along with other agencies, submitted a several-hundred page report to the Committee detailing our work to combat racial discrimination. The efforts to produce the report involved hundreds of individuals – including dozens in the Department, especially the Civil Rights Division – working over the course of months. Prior to the hearing, we produced another report of more than a hundred pages responding to the follow-up questions from the Committee. In addition, I was part of a large U.S. delegation, which also included other high-ranking officials of the State Department, the Department of Homeland Security, the Department of the Interior, and the Equal Employment Opportunity Commission, who participated in six hours of hearings over the course of two days.

Indeed, the Committee expressed appreciation, both at the hearing and in its concluding observations and recommendations, for the efforts we made. The Committee also noted with satisfaction the work carried out by the various executive departments and agencies of the United States that have responsibilities in the field of the elimination of racial discrimination, including the Civil Rights Division.

I appreciate the non-binding observations of the Committee and will thoroughly and carefully consider the recommendations that relate to the work of the Civil Rights Division. If confirmed, I will continue to work toward implementing the Civil Rights Division's obligations under this and all other United States treaties. With regard to pattern or practice cases, I have supervised the use of such cases while serving at the Civil Rights Division. Based upon my experience, I have found that these cases can be an effective remedial measure to combating race discrimination. If confirmed, I will ensure that the Division brings pattern or practice cases where appropriate.

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9. Last year, the House and Senate Judiciary Committees investigated the politicization of the Department and found evidence of politically motivated hiring and firing of career staff. The Department's Inspector General and Office of Professional Responsibility are now investigating. At your confirmation hearing, however, you testified that, since your elevation as acting Assistant Attorney General, you have taken actions to make "it clear to [your] managers in the Civil Rights Division that [you] will not tolerate politicized hiring."

   A. Besides issue directives to your managers, what steps have you taken as Acting Assistant Attorney General to determine whether partisan affiliation played a role in personnel practices in the Division?

Answer: As you indicated, there is an ongoing investigation into allegations regarding the Civil Rights Division's hiring practices. I have great respect for the integrity of that investigation and have cooperated fully. If the final report of the investigation includes recommendations, I will ensure to the full extent of my authority that any appropriate actions are taken. I am not aware of incidents that would require additional action outside of the matters that presently are under investigation by OPR/OIG.

   B. Have you taken any other remedial action, including filing complaints with the Inspector General's office or the Office of Professional Responsibility, to correct and prevent these troublesome practices from occurring in the future? If not, why not?

Answer: I am not aware of any conduct that potentially would require additional remedial action outside of the matters that presently are under investigation by OPR/OIG. On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

   C. At your confirmation hearing, Senator Kennedy asked whether you ever heard anyone in the Division suggest that political affiliation should be a factor in personnel matters. In response, you said that you could not comment on matters currently under investigation. However, the question was not about matters *reported* to investigatory authorities, but rather to comment on what you *personally observed*. Given that you worked in the Division during a time when many of these hiring practices were in effect, have you ever heard or witnessed partisan affiliation being used as a factor in the hiring of career staff at the Division?

Answer: I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

10. In 2002, the Justice Department changed its hiring process to give political appointees the final say in hiring career attorneys and summer interns. At your hearing, you testified that the Division continues to have a "collaborative process" where political appointees and

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career attorneys decide on career hires and that you were "not planning to make any changes."

A. Please detail the exact role that political appointees have in interviewing, considering, or hiring career attorneys and summer interns.

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

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

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

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

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

Since I have been at the Division, unpaid student interns have been interviewed only by career attorneys in the sections. In the past, resumes of recommended student interns were sent to the

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Office of the Assistant Attorney General. I have notified the Section Chiefs that they no longer need to forward these resumes. On March 31, 2008, I initiated a review to determine whether a written policy would be helpful in clarifying the process of hiring unpaid student interns.

B. Are you concerned that public confidence in the Department will be undermined if political appointees continue to play a central role in hiring and firing career attorneys and summer interns?

Answer: Everyone in the Civil Rights Division is bound by the same laws with respect to the hiring and firing of career attorneys. I have made clear to all attorneys in the Division that political affiliation is not an appropriate consideration in personnel decisions.

C. If confirmed, will you commit to changing the hiring process to eliminate political appointees from having any role in the interviewing, consideration, or hiring of career attorneys and summer interns?

Answer: Please see the above response to Question 10.A. regarding the Division's hiring practices. On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

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Responses to Senator Charles E. Schumer
Questions for Grace Chung Becker
Nominee for Assistant Attorney General for Civil Rights

1. During your confirmation hearing, you declined to answer several questions on the ground that the subject of the question was relevant to an ongoing joint investigation by the Inspector General and the Office of Professional Responsibility. However, those investigative offices subsequently informed my staff and other Judiciary Committee staff members that, as a matter of practice, they do not instruct Justice Department personnel not to discuss ongoing investigations. In light of this position taken by the Inspector General and Office of Professional Responsibility, will you now provide responses to the questions you declined to answer at your hearing?

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

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

With respect to the questions posed at the hearing, I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

Ballot Integrity

2. In 2002, the Justice Department launched a new Ballot Access and Voting Integrity Initiative. Since that initiative started, how many in-person voter fraud cases has DOJ investigated and prosecuted? For the purpose of my questions, "in-person fraud" includes instances where an individual allegedly committed election fraud by presenting himself at a polling place and impersonating a registered voter.

Answer: It is my understanding that the Criminal Division does not keep statistical information categorized in precisely the way that your question asks. It is my understanding that the Criminal Division's jurisdiction includes many varieties of

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offenses under the heading of voter fraud, including matters where the voter falsely registered but never voted, matters where the voter was not entitled to vote under applicable State laws (e.g., felons, non-citizens), matters where the voter registered and voted in more than one place, matters where the voter was misled into voting by misinformed election officials or registration agents, and matters where election officials themselves were complicit in the casting of fraudulent ballots at the polls (i.e., "ballot box stuffing" matters).

It is my understanding that the Criminal Division is not aware of any individuals prosecuted federally since 2002 for the conduct that you have defined as "in-person voter fraud."

However, this does not mean that this sort of offense does not occur, nor does it indicate how prevalent it is. That is because "in-person at-the-polls voter impersonation" is very difficult to detect, particularly without a voter identification requirement in place. In addition, I have learned from the Criminal Division that "in-person fraud" is not the sort of offense that reliably leads to criminal complaints to law enforcement authorities. Moreover, it is my understanding that over the years the Criminal Division has attempted to weed out from prosecution individual transgressions where it felt the evidence demonstrated the prospective offender had, for whatever reason, a good faith belief that (s)he was entitled to vote under the circumstances in question, and where prosecution would therefore be unjust.

3. How many of these in-person voter fraud cases occurred in Indiana?

Answer: Please see response to Question 2.

4. The nonpartisan Brennan Center for Justice at New York University did an analysis of 95 voter fraud cases nationwide brought by the Justice Department between 2002 and 2005, and concluded that not one of them was a case of in-person fraud that could have been stopped by a photo ID rule. Do you disagree with this conclusion?

Answer: It is my understanding that "in-person at-the-polls voter impersonation" is very difficult to detect, particularly without a voter identification requirement in place. In addition, I have learned from the Criminal Division that "in-person fraud" is not the sort of offense that reliably leads to criminal complaints to law enforcement authorities. Moreover, it is my understanding that over the years the Criminal Division has attempted to weed out from prosecution individual transgressions where it felt the evidence demonstrated the prospective offender had, for whatever reason, a good faith belief that (s)he was entitled to vote under the circumstances in question, and where prosecution would therefore be unjust.

5. Are you aware of any election in the past seven years where the outcome was affected by <u>in-person</u> voter fraud?

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Answer: It is my understanding that in-person voter fraud, as you have defined the term, typically lacks any identifiable and willing witnesses and is, therefore, very difficult to detect. This makes prosecuting these types of crimes difficult and counting their frequency and effect impossible.

6. Isn't it true that Indiana's voter identification law won't stop absentee ballot fraud?

Answer: The Department's *amicus* brief discusses the context in which Indiana enacted its voter identification law. As more fully set forth in the Department's brief, Indiana determined that it faced a serious problem of actual and potential election fraud. In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting of ballots by nonresidents. *Pabey v. Pastrick*, 816 N.E.2d 1138, 1145, 1153. The Indiana Supreme Court found that the widespread fraud had rendered the election results "inherently deceptive and unreliable." *Id.* at 1151.

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

7. Isn't it true that Indiana's voter identification law won't stop false or fraudulent voter registrations?

Answer: As noted above, as more fully set forth in the Department's brief, the State of Indiana determined that it faced a serious problem of actual and potential election fraud. In particular, the State discovered that its voter registration rolls were highly inflated. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. Indiana responded to those and other concerns by enacting a number of election reforms as discussed in response to Question 6.

8. Isn't it true that Indiana's voter identification law won't stop unscrupulous officials from tampering with election results?

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Answer: As more fully set forth in the Department's brief, the State of Indiana determined that it faced a serious problem of actual and potential election fraud. The State responded to these concerns by enacting a number of election reforms.

9. Isn't it true that Indiana's voter identification law won't stop schemes to buy votes?

Answer: See response to Question 8.

Voter Access

10. Do you support the idea that voter identification laws should be combined with steps to boost registration and turnout, in order to counteract any disenfranchising effect?

Answer: The right to vote is a fundamental right for all Americans. The Department of Justice plays a limited, but important, role with respect to elections, and legislation regarding voter registration is largely a matter of state law. However, the Civil Rights Division has a special role with regard to protecting the right to vote and will take appropriate enforcement action if any such legislation is enacted into law.

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

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

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

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

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

11. Do you support allowing voters to register on Election Day?

Answer: The Department of Justice plays a limited, but important, role with respect to elections, and legislation regarding voter registration is largely a matter of state law. However, the Civil Rights Division has a special role with regard to protecting the right to vote and will take appropriate enforcement action if any such legislation is enacted into law. If confirmed, I would be happy to work with you on any specific legislative proposal you may have on this subject.

12. Another way to encourage registration is to sign people up automatically when they turn 18, like we do for the Selective Service. Do you support automatic registration for eligible citizens when they turn 18?

Answer: Please see response to Question 11.

13. A common issue for voters is that many people don't realize that you are supposed to change your registration if you move to a different voting precinct, even within the same town. Do you support making registration portable within each state, so that voters don't have to register if they just move one block over?

Answer: The Civil Rights Division has enforcement responsibility for the National Voter Registration Act of 1993 (NVRA), which is also known as the "Motor Voter Act." Congress enacted the NVRA to enhance voting opportunities for every American by making it easier to register to vote and to maintain that registration. The Department has worked closely with states to ensure compliance with the NVRA and other federal laws that regulate the registration process, including HAVA and the Voting Rights Act. If additional legislation is enacted into law, the Civil Rights Division will enforce such legislation.

14. A state could also have mobile offices that go to each town and register people to vote and issue any photo identification that will be required at the polls. Do you support the use of mobile registration offices?

Answer: Please see response to Question 11.

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15. What about having a slow transition to any new voter identification law, to give voters a fair warning by letting them keep using a signature instead of a photo identification for the first few elections under a new law. Do you support a reasonable transition phase to any new voter identification law?

Answer: Please see response to Question 11.

16. It is especially hard for disabled people to get to the polls, and many polling places are not accessible to them. Do you support allowing disabled people to sign up for an absentee ballot upon registering and to get an absentee ballot automatically in every subsequent election?

Answer: The Division vigorously enforces Title II of the Americans with Disabilities Act, which requires state and local governments to make their programs and services accessible to persons with disabilities. The Division has instituted Project Civic Access to marshal its investigative and technical assistance capabilities in a comprehensive approach to solving accessibility issues on a community-wide basis. The Division has included the accessibility of polling places as one of its priority items in Project Civic Access. It is my understanding that since the beginning of this Administration, the Division has entered into 56 settlement agreements requiring towns and counties to ensure that their polling places are accessible. In addition, in 2004, the Division created a technical assistance document to help local governments determine if their polling places are accessible. The document, "ADA Checklist for Polling Places," provides practical, detailed information on what makes a polling place accessible and a usable checklist for guiding voting officials through the process of determining if their polling places are accessible.

If confirmed, I will also ensure that the Civil Rights Division continues to monitor states' compliance with Title III of the Help America Vote Act, which requires that all polling places in the United States used for elections for federal office have a voting system which is accessible to persons with disabilities, and bring enforcement actions as necessary.

17. Would you support federal legislation providing that any state that institutes a voter identification requirement must also adopt ballot access protections such as mobile registration and same-day registration?

Answer: Please see response to Question 11.

18. Did Indiana institute any ballot access or voter outreach measures to counteract the possible disenfranchising effect of its photo ID requirement?

Answer: According to its website, the Indiana Secretary of State's office developed a statewide multimedia campaign to educate voters about Indiana's Voter ID law and expanded existing voter outreach and poll worker programs and indeed used federal HAVA grants for these purposes. Indiana also has a "BMV2You" mobile license branch

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that travels to communities and events across Indiana so that BMV customers can register to vote and obtain identification cards. http://www.in.gov/bmv/3554.htm. The State of Indiana would be the appropriate entity to provide further information about this issue.

19. A bipartisan commission on election reform, chaired by former President Carter and former Secretary of State Baker, found that there are "serious and legitimate" concerns that voter ID laws will disenfranchise voters or adversely affect minorities. Do you agree or disagree with this conclusion?

Answer: Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. It is my understanding that the Commission on Federal Election Reform, chaired by President Carter and former Secretary of State Baker, recommended that the United States adopt a photo identification requirement for voters. In support of its recommendation, the Commission noted that "[v]oters in nearly 100 democracies use a photo identification card without fear of infringement on their rights." Commission on Federal Election Reform, *Building Confidence in U.S. Elections* 5, 25 (2005), available at www.american.edu/ia/cfer/report/full_report.pdf.

Enforcement of FACE Act

20. The Freedom of Access to Clinic Entrances Act, which I passed as a House member, allows the Civil Rights Division to use criminal and civil penalties against anyone who blocks access to a reproductive health clinic entrance by force.

21. Will you commit to enforcing this law vigorously against any violators?

Answer: I am committed to vigorously enforcing all of the statutes within the Division's jurisdiction in a fair and nonpartisan manner, including the Freedom of Access to Clinic Entrances Act.

22. Will you also pledge that if the FACE Act is attacked in a lawsuit, you will defend the law as constitutional?

Answer: The Department of Justice has a longstanding policy with respect to defending the constitutionality of acts of Congress. *E.g. Northwest Austin Mun. Util. Dist. v. Gonzales*, No. 06-1384 (D.D.C.). If confirmed, I would follow the Department's long-standing policy on this issue with regard to the FACE Act.

23. The Department of Justice's Task Force on Violence against Health Care Providers has also been a critical tool in protecting reproductive health clinics and patients. The Task Force provides training, coordinates investigations, and helps clinics become more secure. Will you commit to making sure that the Task Force continues its work and is given sufficient resources?

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Answer: Yes.

Enforcement of Voting Rights Statutes

24. As you know, the Justice Department for several years has pursued a Ballot Access and Voting Integrity Initiative. As a part of this initiative, DOJ adopted new prosecution guidelines for election crimes. Previously, prosecutors did not pursue "isolated acts of individual wrongdoing" that did not involve a systematic effort to interfere with an election. (*New York Times*, April 12, 2007) Under the new guidelines, prosecutors can pursue cases against individuals. Do you think that it is appropriate and a good use of government resources for the Justice Department to pursue cases where an individual violates a voting law working alone?

Answer: The Criminal Division is responsible for the prosecution guidelines for election crimes.

Ballot fraud dilutes the worth of honest votes and destroys the integrity of the election process upon which our representative government is based. The Department's Ballot Access and Voting Integrity Initiative and the Criminal Division's current prosecution guidelines reflect the Department's renewed commitment to aggressively pursuing all efforts to lessen the value of every person's vote – regardless of whether the motive is racial, political, or otherwise unlawful.

It is my understanding that the Department's current approach to election crime matters incorporates its enforcement experiences over the past decade and recognizes that there are situations where prosecution of an individual act of election fraud or campaign fraud may be warranted. This approach replaces what was in essence a blanket immunity for an individual who commits a federal crime with prosecutive review on a case-by-case basis, as is the case in other areas of criminal law enforcement.

It is my understanding that at the start of a criminal investigation, it is extremely unlikely that the government will know if a subject or target is working alone or is part of a larger group that is engaged in criminal activity. This might also be true even after a defendant is charged. Indeed, it is common for prosecutors investigating criminal conduct to seek charges against low-level defendants first, as evidence against these individuals tends to be more easily obtained. Moreover, these defendants generally have limited criminal exposure and often plead guilty and cooperate in the investigation by providing evidence that assists in the prosecution of those with greater culpability.

As is the case in other areas of criminal law enforcement, the effect of vigorous and impartial enforcement of the federal statutes criminalizing various types of election crimes is likely to extend beyond the defendants who are charged in a specific case and deter others who are considering similar conduct. While such deterrence cannot be measured, it remains an important societal goal. Congress recently recognized the important of deterrence in the 2002 campaign financing reforms, which enacted new

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felony penalties for campaign financing crimes and also mandated a new sentencing guideline for these offenses that would reflect the need for "aggressive law enforcement action to prevent such violations [in the future]." Bipartisan Campaign Reform Act of 2002, § 314(b)(1) (emphasis added).

The Department's current approach to individual acts of election fraud is also consistent with the enactment by Congress of a broad array of statutes criminalizing such individual acts. See, *e.g.*, 42 U.S.C. 1973i(c) (providing false information to register or vote, buying votes, accepting payment for registering or voting, or conspiring to vote illegally in a federal election); 42 U.S.C. 1973i(e) (voting more than once in a federal election); 42 U.S.C. 1973gg-10 (intimidating voters in a federal election; fraudulently registering or voting in a federal election); 18 U.S.C. 611 (voting by an alien); 18 U.S.C. 911 (falsely asserting United States citizenship); 18 U.S.C. 1015(f) (falsely asserting United States citizenship to register or vote in any election).

25. Under the new guidelines, there are a number of documented instances where prosecutors have pursued cases and taken people to trial in cases that turned out to be mistakes rather than intentional frauds. Do you think that it is appropriate and a good use of government resources for the Justice Department to pursue cases where an individual violates a voting law by mistake?

Answer: I am not aware of any prosecutions or convictions that were based on mistakes.

26. Congress enacted the National Voter Registration Act of 1993 (NVRA) in order to make it easier for Americans to register to vote. The Civil Rights Division enforces the NVRA, which requires states to offer voter registration services at offices that issue driver's licenses and provide public assistance or services to disabled people. As Acting Assistant Attorney General, what have you done to make sure that state agencies are properly implementing the NVRA ahead of the 2008 election?

Answer: As Acting Assistant Attorney General, I will continue to ensure that the Department enforces all federal election laws enacted by Congress. While I did not supervise the Voting Section until December 2007, I can tell you that the Section sent letters to approximately 18 states regarding their compliance with Section 7. We continue to monitor the compliance of all covered states with the NVRA and will gather additional information from states and take action as appropriate. Our efforts have, in some instances, resulted in compliance without the need to resort to litigation. For example, the State of Nebraska recently took action to comply with Section 7 as a result of the Department's inquiry. In a letter to the State last year, the Department suggested that Nebraska may have to take steps to comply with Section 7, and on March 10, 2008, Nebraska's Governor signed into law a bill designating additional selected State offices as "voter registration agencies" under Section 7 of the NVRA. In addition, officials from the state of Iowa recently reported that a similar bill introduced in response to the Department's enforcement efforts is currently pending in the State legislature.

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27. Will you commit to increasing enforcement of the NVRA in time for the 2008 elections?

Answer: I am committed to vigorously enforcing all of the statutes within the Division's jurisdiction in a fair and nonpartisan manner, including the NVRA.

28. The Americans with Disabilities Act requires that polling places be accessible to disabled voters, but a 2000 GAO study found that 84 percent of polling places were not accessible. What steps, if any, have you taken to make polling places accessible in time for the 2008 election?

Answer: Title II of the Americans with Disabilities Act requires state and local governments to make their programs and services accessible to persons with disabilities. The Division has instituted Project Civic Access to marshal its investigative and technical assistance capabilities in a comprehensive approach to solving accessibility issues on a community-wide basis. The Division has included the accessibility of polling places as one of its priority items in Project Civic Access. It is my understanding that since the beginning of this Administration, the Division has entered into 56 settlement agreements requiring towns and counties to ensure that their polling places are accessible. In addition, in 2004 the Division created a technical assistance document to help local governments determine if their polling places are accessible. The document, "ADA Checklist for Polling Places," provides practical, detailed information on what makes a polling place accessible and a usable checklist for guiding voting officials through the process of determining if their polling places are accessible.

The Civil Rights Division will also continue to monitor states' compliance with Title III of the Help America Vote Act, which requires that all polling places in the United States used for elections for federal office have a voting system which is accessible to persons with disabilities, and bring enforcement actions as necessary.

For the 2008 elections, the Department will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Department will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws. Our monitoring efforts will focus on ensuring access for voters with disabilities, as well as racial and language minority voters.

Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. To that end, Department officials will continue to meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations and groups that focus on disability rights, in addition to organizations that advocate on behalf of other minorities. Department officials also will meet with representatives of State and local election officials before the 2008 general election to provide a forum for discussion of State and local officials' concerns regarding ballot access, including polling place accessibility for voters with disabilities.

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

29. Will you commit to increasing enforcement of the polling place accessibility requirement in time for the 2008 elections?

Answer: I am committed to vigorously enforcing all of the statutes within the Division's jurisdiction in a fair and nonpartisan manner, including the provisions of the Americans with Disabilities Act.

Preclearance of Georgia Voter Identification Law

30. In 2005, career staff in the Civil Rights Division recommended blocking a new voter identification law in Georgia because it would have a discriminatory effect on African-American voters. However, political appointees overruled that recommendation and cleared the law. A federal judge eventually compared the law to a "modern-day poll tax" and the Georgia legislature modified it. What is your opinion about how the Division's appointed leadership handled the Georgia law?

Answer: The Georgia identification law was precleared before I came to the Civil Rights Division, and I was not involved in the decision in any way. It is my understanding that the Division made the proper decision under the facts, and no evidence has been produced to indicate that an objection should have been made, including in the subsequent private litigation. In conducting a Section 5 preclearance review, the Voting Section considers only whether the proposed voting change denies or abridges the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is able to prove the absence of such discrimination, the Attorney General does not object to the change, and it is precleared. Due in large part to this narrow scope of review, most voting changes submitted to the Attorney General are determined to have met the Section 5 standard; since Section 5 was enacted, the Attorney General has objected to only about one percent of the voting changes that have been submitted. No court decision has called into question the Department's decisions to preclear the Georgia Voter ID submissions. In Georgia, both state and federal courts have dismissed lawsuits challenging the imposition of the ID requirement.

The Georgia voter identification law, which amended an existing voter identification statute that had been precleared by the prior Administration, was precleared under Section 5 of the Voting Rights Act after a careful analysis that lasted several months. The decision took into account all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of State photo identification and driver's license cards. The data showed, among other things, that the number of people in Georgia who already possess a valid photo identification greatly exceeds the total

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number of registered voters. In fact, the number of individuals with a valid photo identification is slightly more than the entire eligible voting age population of the State. The data also showed that there is no racial disparity in access to the identification cards. The State subsequently adopted, and the Department precleared, a new form of voter identification that will be available to voters for free at one or more locations in each of the 159 Georgia counties.

In *Common Cause/Georgia v. Billups*, the district court did not conclude that the identification requirement violated the Voting Rights Act. To the contrary, the court refused to issue a preliminary injunction on that ground. The court instead issued a preliminary injunction on constitutional grounds. The Department cannot lawfully consider constitutional grounds when conducting a preclearance review under Section 5 of the Voting Rights Act. Accordingly, the court's preliminary ruling did not call into question the Department's preclearance decision. On September 26, 2007, *Common Cause/ Georgia v. Billups* was dismissed by the federal district court based on lack of standing; the court also rejected the plaintiffs' claims under the Equal Protection Clause.

31. As Assistant Attorney General, will you institute any new safeguards to make sure that political appointees do not overrule career staff based on partisan motives?

Answer: I have no reason to believe that any attorneys currently in the Civil Rights Division make litigation decisions based on partisan motives. However, if I become aware of any improper actions, I am prepared to take appropriate action.

32. Will you commit to reviewing and taking personal responsibility for any preclearance decisions by the Division under the Voting Rights Act?

Answer: If confirmed as Assistant Attorney General, I will take responsibility for all preclearance decisions by the Civil Rights Division.

Election Fraud Indictments

33. You were serving as Deputy Assistant Attorney General during the 2006 elections. Interim U.S. Attorney Bradley Schlozman came under fire for announcing four indictments in Missouri just days before the election against individuals who had filed false voter registration forms. Were you consulted in any way, by Mr. Schlozman or by others at the Justice Department, about the decision to seek indictments so close to an election? If yes, please state who consulted you, what you were asked, and how you responded.

Answer: No.

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Responses to
Questions for Grace Young Chung Becker
Assistant Attorney General for the Civil Rights Division, Department of Justice
From Senator Specter

Ms. Becker, I recently sent a letter to Secretary of Education Margaret Spellings (and copied you) regarding anti-Semitism on college campuses. As the letter details, I am concerned with the spread of anti-Semitism on college campuses and the Department of Education's apparent change in policy concerning the jurisdiction of the Department of Education's Office of Civil Rights to pursue claims alleging harassment of Jewish students. I have attached the letter for your convenience. I would appreciate hearing your thoughts on the letter.

1. Does the Department of Justice's Civil Rights Division regularly interact with the Department of Education's Office of Civil Rights (OCR)? Please describe the extent of these interactions, including any recent enforcement actions taken as a result of OCR referrals.

Answer: The Civil Rights Division has regular interactions with the Department of Education's Office of Civil Rights (OCR). These occur primarily through the Division's Educational Opportunities Section (EOS), Disability Rights Section (DRS), and Coordination and Review Section (COR). EOS coordinates with OCR on many of its cases, particularly those involving school districts operating under a desegregation court order, and meets regularly with OCR on English Language Learner issues. DRS coordinates with OCR on matters involving Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Although the Division has not received any recent referrals from OCR on educational issues, the following is a Title II case that was referred to DRS by OCR and was recently resolved through a consent decree. *Paralyzed Veterans of America and United States v. University of Michigan, et al.*, C.A. No. 07-11702 (E.D. Mich.), involves allegations that the University of Michigan's stadium is not accessible to persons with disabilities. In addition, COR routinely interacts with OCR, which is a member of the Federal Interagency Working Group on Limited English Proficiency (LEP), an organization organized and chaired by COR comprising approximately 40 federal agencies that meet periodically to discuss LEP issues and to develop resources. COR and OCR also have worked closely on Title IX issues.

2. Is it the Justice Department's view that Title VI of the Civil Rights Act of 1964 does not apply to harassment of Jewish students on college campuses?

Answer: To the best of my knowledge, the Department of Justice has not taken any position on whether Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on "race, color, or national origin" but not religion, would apply to harassment of Jewish students on college campuses. I understand that the Department of Education, in a letter to you dated April 2, 2008, has taken the position that in some cases, discrimination on the basis of race, color, or national origin may involve religious discrimination as well. I also note that Title IV of the Civil Rights Act of 1964 explicitly prohibits discrimination on the basis of religion and that the Civil Rights Division has initiated numerous investigations on behalf of Jewish students under this statute.

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3. What actions does the Justice Department take to ensure that students of all religions are able to learn and study in an environment free from harassment?

Answer: I am committed to the principle that all students should be able to learn in an environment free of harassment. The Civil Rights Division's Educational Opportunities Section investigates incidents of harassment in public education and brings lawsuits where appropriate. For example, in 2005, the Division settled a case with the Cape Henlopen, Delaware, School District over harassment of a Muslim elementary school student by a teacher and other students.

The Division also has engaged in extensive educational efforts regarding religious discrimination and harassment. The Division has distributed a pamphlet entitled *Protecting the Religious Freedom of All: Federal Laws Against Religious Discrimination* widely to civil rights and religious organizations. This pamphlet describes the Division's Title IV enforcement jurisdiction and includes examples of types of discrimination that may be covered, including an example of harassment based on religion. In February 2007, the Department launched a new initiative, entitled *The First Freedom Project*, to increase enforcement of laws protecting against religious discrimination and religious bias crimes, and other laws protecting religious freedom enforced by the Department. The initiative includes a new website, www.FirstFreedom.gov, which includes a section on discrimination in education, and a series of seminars, at which I have spoken.

It is my understanding that other Department components also have taken actions to ensure that students of all religions are able to learn in an environment free from harassment. For example, the Department's Community Relations Service (CRS) actively works to reduce tensions and prevent violence in school stemming from disputes over issues of race, color, and national origin. CRS has created a program called SPIRIT, which stands for Student Problem Identification and Resolution of Issues Together. This innovative program recognizes the value of student participation in solving racial conflict. Bringing together students, administrators, teachers, and parents, SPIRIT programs help to identify issues that are perpetuating conflict and seeks to develop solutions. As part of the program, school administrators and staff select student leaders to help guide the program. Since its inception, SPIRIT programs have been conducted in hundreds of schools across the country and have been integral in preventing violence and conflict in areas with changing demographic populations.

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Hearing of the Senate Judiciary Committee
"Executive Nomination"
Tuesday, March 11, 2008

Response to Question Submitted by Senator Sheldon Whitehouse to Grace Chung Becker

Will the Department of Justice support S. 2305, the Anti-Caging Prohibition Act? If not, why not?

Answer: The legislation is under review by the Department. I am firmly committed to vigorously enforcing all of the federal civil rights laws. If confirmed, I would be willing to work with the Committee on any civil rights legislation.

If confirmed, I will ensure that the Civil Rights Division investigates any credible allegations that voters are being discriminated against on the basis of their race, and that it enforces the statutes within its jurisdiction to ensure equal access to the polls for all citizens. To the extent that "vote caging" may violate voters' rights under existing federal law, I will ensure that the Civil Rights Division enforces the statutes currently within its jurisdiction that could be used to prevent unlawful disenfranchisement.

First, the Department is charged with enforcing the National Voter Registration Act of 1993 (NVRA). As you know, the NVRA specifies voter registration procedures for federal elections. Specifically, Section 8 of the NVRA provides that the name of a registrant may be removed from the official list of eligible voters in only a few circumstances: (i) at the voter's request; or (ii) as provided by State law, by reason of criminal conviction or mental incapacity; or (iii) under a program conducted by the State, as required by the NVRA, to remove ineligible voters who have died or have moved. Moreover, even a voter who is thought to have moved may only be removed from the voter rolls if he or she has failed to respond to a confirmatory mailing from the State and has failed to vote in two consecutive federal general elections. 42 U.S.C. 1973gg-6. Therefore, under federal law, a voter may not be removed from a voter registration list merely for failing to vote or because a private mailing sent to the voter was returned as undeliverable. If States remove voters from the registration rolls without following the protections afforded by the NVRA, I will ensure that the Division takes appropriate action.

Second, the Department of Justice also enforces certain provisions of the Help America Vote Act of 2002 (HAVA). The Department is charged with enforcing Section 302(a) of HAVA, which provides that if an individual's name does not appear on the voter registration list, or if an election official asserts that the individual is not eligible to vote, but the individual asserts he or she is a registered voter and eligible to vote in a federal election, the individual is entitled to cast a provisional ballot in that election. If the appropriate State or local election official then determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted in that election in accordance with State law. Additionally, States are required to establish a

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system by which individuals who cast provisional ballots may determine whether their ballots were counted. 42 U.S.C. 15482(a). If States fail to afford voters their rights under HAVA, I am committed to taking appropriate action.

Third, pursuant to the Voting Rights Act of 1965, the Department of Justice monitors elections in various parts of the country with Department of Justice personnel and federal observers. 42 U.S.C. 1973a, 1973g. Our election monitoring program is a major component of our work to protect against illegal discrimination at the polls. Each year, the Department coordinates the deployment of hundreds of federal government employees in counties, cities, and towns across the country to monitor elections and ensure equal access to the ballot. In 2006, the Department deployed a record number of Department monitors and federal observers from the Office of Personnel Management to jurisdictions across the country for the mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 States during the November 7, 2006, election. Overall, in calendar year 2006, we sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year. If the Division detects discrimination on the basis of race, color or membership in a language minority group in voting practices or procedures, the Division is authorized to conduct an investigation and file suit under Section 2 of the Voting Rights Act. 42 U.S.C. 1973.

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U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 12, 2007

MEMORANDUM TO ALL ATTORNEYS

FROM: Grace Chung Becker
Acting Assistant Attorney General

SUBJECT: Guidance on Personnel Matters

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

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

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

(1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;

(2) solicit or consider oral or written employment recommendations unless such recommendations are based on personal knowledge or records of job-related abilities or characteristics;

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

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

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

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

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

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

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

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

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

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

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

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

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U.S. Department of Justice
Office of Attorney Recruitment and Management

Washington, D.C. 20530

MEMORANDUM

TO: Heads of Offices, Boards, Bureaus and Divisions

FROM: Louis DeFalaise, Director

SUBJECT: Changes to the Attorney General's Honors Program and Summer Law Intern Program

DATE: April 26, 2007

This memorandum outlines significant changes and highlights Component responsibilities for the 2007-2008 Attorney General's Honors Program (HP) and the Summer Law Intern Program (SLIP). At a meeting on December 5, 2006, Components were invited to submit recommendations to improve the selection process. Based on recommendations made by the participating Components and the review that followed, the Office of the Deputy Attorney General (ODAG) has authorized this office (OARM) to implement the changes outlined below to improve the selection process. Major changes include:

- Clarifying Program standards and providing process guidance for Component use during the initial review process;
- Modifying the AVUE system to allow reviewers to add comments indicating the component specific criteria for individual selections;
- Delegating the Departmental review process to OARM and the Components;
- Providing the reasons for nonconcurrence to the Components for the purpose of reconsideration; and,
- Exempting SLIP selections from Departmental review (subject to audit) and deferring the review to Funnel Offer candidates.

1. **Component Level Review**

Each Component will ensure that its internal selection process is focused on selecting highly qualified candidates with credentials that establish their eligibility to be considered as an Honors level hire by the Attorney General. Initial Component-level review must comply with the review standards guidance and include an internal quality review prior to forwarding the names of candidates for interviews to OARM.

Component Review Standards Guidance

Candidates selected for interviews should have outstanding academic credentials. Reviewers should pay close attention to academic performance (as reflected by class rank, where available), grades, academic accolades, graduation honors and other achievements. Components that select a candidate with less than an outstanding academic record must provide a justification for the selection based on the candidate's skills, background, experience or training in a relevant field of the Component's practice. Suitable skills and experience include: judicial clerkships (particularly at the Supreme Court or Federal Circuit Court level); law review/journal positions and articles; competitive moot court experience demonstrating superior oral advocacy ability; or special education, skills or background directly relevant to the Department's and/or Component's priorities and missions. This list is not exhaustive. The justification should articulate the basis for selecting the candidate for interview, explain how the candidate would positively contribute to the component's mission, and should demonstrate the lack of suitable candidates possessing both the identified qualifications and a strong academic background.

Components should, as a matter of practice, check a candidate's references and review any information about the candidate that is easily accessible to the general public. When considering web-posted information, Components should exercise due caution to ensure correct identification and attribution.

It is also very important that a candidate's overall submission reflect the level of writing skills, organization, and persuasiveness commensurate with selection as an Honors level hire by the Attorney General. The quality of the candidate's overall submission, particularly the structure and content of responses in the "short answer questions" are critical factors that should be considered in assessing the candidate's character, judgment and maturity.

Finally, each Component's internal review should ensure that the selection process identifies candidates that meet Department and Component needs and that selected candidates, when compared objectively to those who were not selected, are, in fact, the best candidates for these positions.

2. Department Level Review

An ad hoc working group composed of representatives from the major participating Components will conduct a Department-level review to ensure that selections comply with the Component Review Standards and that the number of interviews does not exceed budgetary limitations. Each formally participating major Component should designate one individual to participate in this process full-time for approximately two working days. The reviews will be conducted on-site at OARM. After the review is completed, OARM will provide affected Components with a list of candidates that have been identified as noncompliant, as well as the basis for that conclusion. If, after further review, the Component still wishes to proceed with an interview, it may return a candidate's name to OARM with further explanation. If OARM

concurs, the interview can proceed; if not, the Component head can elect to request reconsideration of the candidate consistent with the practice in other career personnel matters.

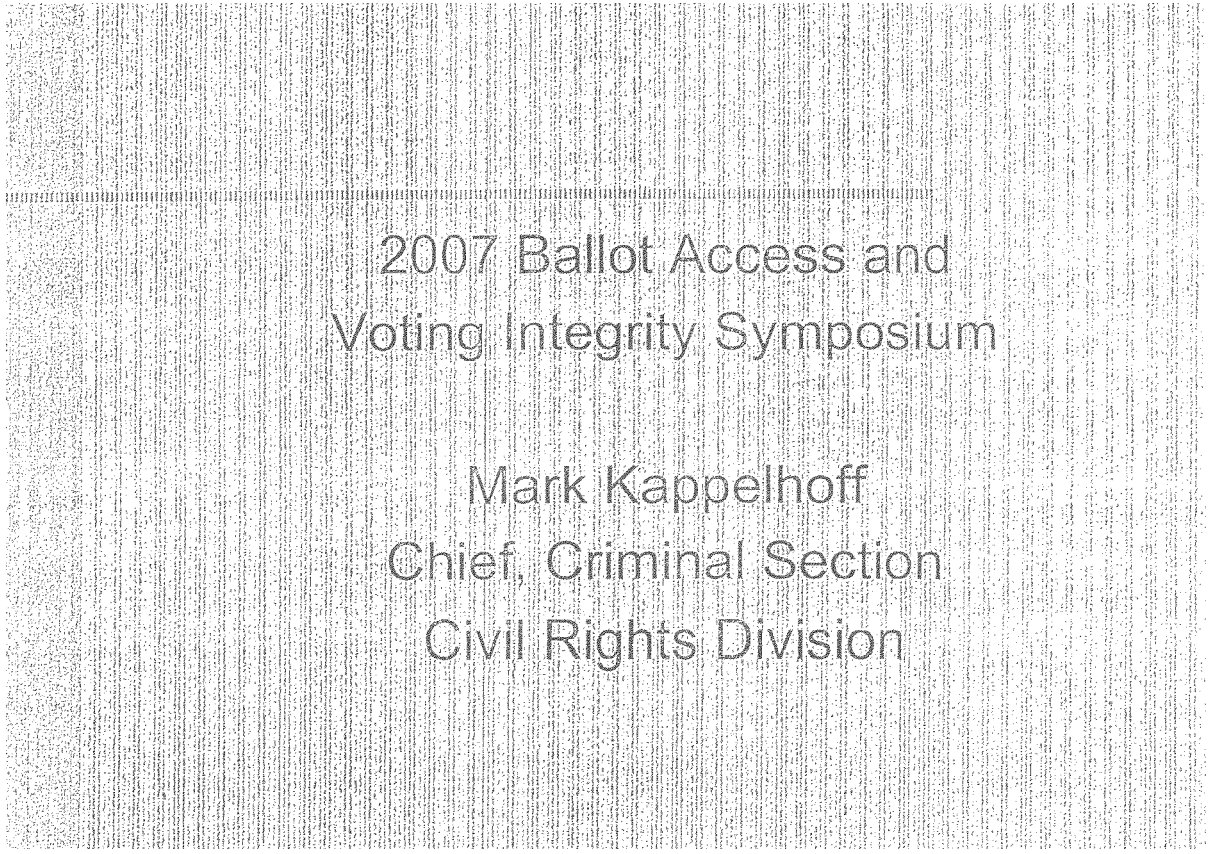
3. **SLIP and Funnel Offer Reviews**

In order to reduce the burden on the Ad Hoc working group for Department level review and to ensure timely responses to the Components, OARM will instead randomly monitor SLIP selections for compliance with Component Review Standards and notify Components of any discrepancies along with the basis for that conclusion.

Funnel offers are subject to the same Component-level review standards and process that apply to the Honors Program. Components should forward proposed funnel offers to OARM for review and concurrence before issuing offers. OARM will provide the Component with the reason for the nonconcurrence of any proposed funnel offer. The nonconcurrence may be appealed, consistent with the practice in other career personnel matters.

The adoption of these changes, supported by the continued interest and dedication of Component personnel at all levels, should enhance one of the goals of the Attorney General's Honors Program – to continue to attract and hire highly qualified individuals from the broadest base possible.

Your personal involvement, interest in and support of the Attorney General's Honors Program is greatly appreciated. As with these and other past changes, OARM is interested in your comments and suggestions for improving the Honors Program and Summer Legal Intern Program and how we conduct them. Your further ideas and suggestions are always welcome. Thank you again.


2007 Ballot Access and
Voting Integrity Symposium
Mark Kappelhoff
Chief, Criminal Section
Civil Rights Division

Overview of the Civil Rights Division's Criminal Section

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

Jurisdiction Over Voting/Election Matters

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

Statutes Enforced

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

Statutes Enforced Cont.
Vote Buying
Voter Suppression

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

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

May 2, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Grace Chung Becker, nominee to be Assistant Attorney General for the Civil Rights Division, to the written questions received from Senators Specter, Kennedy, Feingold, Schumer, Durbin, Whitehouse and yourself following the confirmation hearing for Mr. Becker on March 11, 2008.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

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

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

Torture

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Civil Rights

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

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

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

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

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

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

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

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

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

Answer: See above response to question 10.

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

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

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

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

13. John Tanner, the former Chief of the Voting Section, recently departed after a very troubled tenure that spawned several ongoing OPR investigations, created significant morale problems, and produced serious allegations of politicized enforcement of our voting laws. It will be crucial to select a successor who is not in any way tainted by Mr. Tanner's tenure and is free of any past problems as a manager. Only a fresh start by a leader of the highest qualifications and integrity can restore the public's confidence in the vigor and impartiality of the Section's enforcement of the law.

    a. Do you agree that it is important to select a new Section Chief for the Voting Section who was not associated with Mr. Tanner's leadership of the Section and will bring a fresh perspective?

    b. Do you agree that in order to rebuild morale in the Voting Section it is essential to select a Section Chief who has impeccable credentials as a manager?

    c. Do you agree that anyone selected to head the Voting Section must have a strong record of fairness that will inspire confidence in his or her ability to appropriately address any concerns about equal employment opportunity in the Section?

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

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

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

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

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

15. Please provide:

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

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

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

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

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

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

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

DRS's responsibilities under the ADA include:

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

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

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

Compliance activities

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

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

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

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

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

Mediation

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

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

Technical assistance

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

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

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

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

Updating Architectural Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Partisan Policies

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

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

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

    a. Did anyone employed in the Division tell you that ideology or partisan affiliation had played a role in personnel decisions for career Division employees at any time?

    b. Do you have any reason to believe that ideology or partisan affiliation had a role in personnel decisions for career Division employees?

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

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

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

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Written Follow-Up Questions of Sen. Dick Durbin
to Grace Chung Becker
Nominee to be Assistant Attorney General for Civil Rights
May 15, 2008

1. In question 2, I asked you whether you stood by the Civil Rights Division's August 2005 decision to pre-clear the Georgia photo ID law. You indicated that you did, stating: "The decision took into account all of the relevant factors, including the most recent data available from the State of Georgia on the issuance of State photo identification and driver's license cards."

Your statement is contradicted by Dr. Toby Moore, the former career geographer/statistician in the Division's Voting Section. On October 30, 2007, Dr. Moore gave the following testimony to the House Judiciary Committee: "as staff prepared the preclearance letter, Georgia officials informed us that critical data it had submitted earlier regarding ownership of photo IDs was invalid. In fact, the state had overstated the number of people who had licenses or ID cards by some 600,000. This came as no surprise, as we had informed John [Tanner] earlier in the week that the state's data appeared to be flawed. *Despite our pleas to be given a few days to analyze this data – which would have required no extension of our deadline, and which we had previously taken an extension to obtain – we were denied the opportunity.*"

a. **How do you justify your statement that "the most recent data available from the State of Georgia" was taken into account, given Dr. Moore's testimony?**

b. **Why weren't Dr. Moore and his career colleagues who reviewed the Georgia photo ID law permitted to have a few days to analyze the newly received data? Why was the Civil Rights Division in such a rush to pre-clear this law?**

c. **Is it your belief that the Georgia photo ID law – pre-cleared by your Division in August 2005 and struck down as an unconstitutional poll tax two months later – had no discriminatory impact on African-American voters? Please provide a yes or no answer.**

Answer: As I stated previously, the Georgia identification law was precleared before I came to the Civil Rights Division, and I was not involved in the decision in any way. It is my understanding that the Division made the proper decision under the facts. No court decision has called into question the Department's decisions to preclear the Georgia Voter ID submissions. In Georgia, both state and federal courts have dismissed lawsuits challenging the imposition of the ID requirement.

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2. In question 5(a), I asked you to provide summaries of investigations that have been pursued by the Civil Rights Division under Section 11(b) of the Voting Rights Act of 1965 and Section 1971(b) of the Civil Rights Act of 1957 since January 2001. You indicated there have been 37 such investigations but you declined to provide summaries. Please provide summaries.

Answer: In addition to the 37 investigations mentioned in the prior response, the Division has opened two additional matters, bringing the total since January 2001 to 39 investigations into allegations of voter intimidation, threats, or coercion. These investigations implicated multiple statutes, including Section 11(b) and Section 1971(b). Of the 39 matters, we cannot comment on eight matters due to pending law enforcement concerns. With respect to the remaining 31 investigations, 12 were on behalf of African Americans in Texas, Mississippi, South Carolina, Louisiana, Arkansas and New York; 16 were on behalf of Hispanics in California, Illinois, Texas, Georgia, Florida, North Carolina, Pennsylvania, Washington, Arizona, New Jersey and New York; four on behalf of Asian Americans in California and Massachusetts; and one on behalf of Caucasians in Mississippi. Two of the 31 investigations were on behalf of multiple protected classes. Eighteen investigations were closed after the matter had been resolved or a thorough analysis of the facts and law indicated that further law enforcement action was not appropriate.

Of the 31 investigations, the following 13 became cases or settlements:

United States v. Kane County, IL (N.D. Ill 2007)
United States v. City of Walnut, CA (C.D. Ca. 2007)
United States v. Galveston County, TX (S.D. Tex. 2007)
United States v. City of Rosemead, CA (C.D. Cal. 2005)
United States v. Ector County, TX (W.D. Tex. 2005)
United States v. Long County, GA (S.D. Ga. 2006)
United States v. City of Boston, MA (D. Mass. 2005)
United States v. Ike Brown and Noxubee County (S.D. Miss 2005)
United States v. Berks County (E.D. Pa. 2003)
United States v. Yakima County (E.D. Wash. 2004)
United States v. Cochise County, AZ (D. Ariz. 2006)
United States v. San Diego County (S.D. Cal. 2004)
United States v. Westchester County (S.D.N.Y.)

Summaries and relevant court documents are on the Division's website at http://www.usdoj.gov/crt/crt-home.html.

3. In question 7(b), I asked you to indicate how many career attorneys hired under your watch had been interviewed by one or more political appointee in the Civil Rights Division. You declined to provide an answer, indicating that the Division does not track this information. Whether or not that is the case, the information is readily attainable. For example, in response to a question I submitted to your predecessor in June 2007, the

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Department of Justice stated in a February 2008 response to Congress that "since November 2005 we are not aware of any career attorneys have been hired [sic] to work in the Civil Rights Division after being interviewed only by political appointees." Please provide a complete answer to question 7(b).

Answer: Since I began working in the Civil Rights Division in March 2006, as far as I am aware, all attorneys who have been hired to work in the Division have been interviewed by career attorneys within the Division. As my predecessor indicated and as far as I am aware, "since November 2005 we are not aware of any career attorneys have been hired [sic] to work in the Civil Rights Division after being interviewed only by political appointees." Honors Program hires, interns, and some other attorneys hired in the Civil Rights Division since I was appointed to be Acting Assistant Attorney General were interviewed only by career attorneys. Non-career supervisory attorneys have also participated with career attorneys in the hiring interview process of some non-Honors Program attorneys. The exact number is not readily attainable.

4. In question 15(a), I asked you to provide summaries of the 14 "pattern or practice" investigations that you testified were pending in the Civil Rights Division's Employment Litigation Section. You declined to do so. Please provide summaries of these investigations, redacting the specific identity of the targets if necessary, but indicating other relevant information such as the basis of each investigation (and specifying the race, national origin, etc. of the victims).

Answer: As I stated previously, it is my understanding that these 14 ongoing investigations include alleged discrimination on the basis of race, color, national origin, and sex. As these are ongoing investigations, I cannot comment further.

5. In June 2007, I submitted a written question (number 12) to your predecessor and requested summary information regarding civil rights appellate oral arguments handled by Civil Rights Division political appointees since January 2001. In its February 2008 response to this question, the Department of Justice provided a listing only of arguments conducted by current members of your staff, and indicated: "The Division does not systematically track this information." Whether or not that is the case, this information is readily attainable.

> **a. Please provide a complete answer to question 12 submitted in June 2007, indicating the name of all political appointees in the Civil Rights Division since January 2001 who argued an appellate case, and provide a brief summary of the case.**

Answer: In addition to the cases my predecessor listed in his response to your previous question, I have identified the following additional civil rights cases have been argued by OAAG attorneys since January 2001. I note that OAAG attorneys may be either political appointees or career employees; for example, the Special Counsel for Religious

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Discrimination is a career lawyer detailed to OAAG from the Civil Rights Division's Appellate Section.

***Sherbrooke Turf, Inc. v. Minnesota Department of Transportation* and *Gross Seed Co. v. Nebraska Department of Roads* (Eight Circuit) (submitted May 15, 2003, argued by Counsel to the Assistant Attorney General Matt Michael Dummermuth)**
Two non-minority landscaping contractors filed separate suits against the Minnesota Department of Transportation and Nebraska Department of Roads, challenging the states' implementation of a federal highway program requiring that a portion of federal highway construction funds be paid to small businesses owned and controlled by socially and economically disadvantaged individuals. The contractors argued that this program violated the Fourteenth Amendment's equal protection clause. The federal government intervened as an additional defendant. The district courts in Minnesota and Nebraska granted summary judgment in favor of the government. The contractors appealed. The Eighth Circuit affirmed, holding that: the program served compelling government interest; the landscaping contractors failed to meet the ultimate burden of presenting affirmative evidence, sufficient to rebut the government's initial showing of the existence of a compelling government interest; the regulations governing states' implementation of the federal highway program were narrowly tailored to serve a compelling government interest; and the individual states' implementation of the program were narrowly tailored to serve compelling government interests.

***United States v. May* (Fourth Circuit) (decided March 4, 2004; argued January 23, 2004, by Assistant Attorney General R. Alexander Acosta)**
In this criminal case, defendant-appellant was convicted of two offenses related to his involvement in burning a cross for purposes of racial intimidation. The district court departed downward from the Sentencing Guidelines range of 18 to 24 months' imprisonment and sentenced defendant-appellant to one month in custody (with credit for time served for bond violations) followed by two years of supervised release, with five months of home detention. The government appealed the sentence. The Fourth Circuit vacated and remanded for resentencing, holding that the downward departure based on victim conduct was not warranted; the downward departure based on aberrant behavior was not warranted; and the downward departure based on acceptance of responsibility was not warranted.

***United States v. Bradley* (First Circuit) (argued August 6, 2004, by Deputy Assistant Attorney General Bradley J. Schlozman)**
In this criminal case, the defendants-appellants were convicted of forced labor and related crimes based on their abusive treatment of several Jamaican seasonal workers whom they recruited in Jamaica and then kept in the United States by threats and other means. On appeal, the First Circuit affirmed the defendants-appellants' convictions and sentences, holding that in this prosecution under the forced labor statute, 18 U.S.C. 1589, for obtaining services by "threats of serious harm," the district court's failure to give a limiting instruction that the statute applied only to improper threats, and not to warnings of adverse but legitimate consequences, was not plain error. The district court also held that a jury instruction advising jurors that they could consider immigrants' special

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vulnerabilities was not improper; that the fact that the immigrants might have had an opportunity to flee was not determinative on the question of forced labor; that certain other bad acts evidence was admissible as going to motive and pattern; and that the defendants-appellants' base offense levels under the sentencing guidelines could be enhanced on the ground that the immigrants were held more than 30 days. The defendants-appellants filed a petition for *certiorari*. The Supreme Court vacated and remanded the case for reconsideration in light of *United States v. Booker*, 543 U.S. 220 (2005), which had been decided after the First Circuit's decision but before the time for seeking certiorari had expired. On remand, the First Circuit held that a remand for resentencing was required because the district court had treated the sentencing guidelines as mandatory at the original sentencing.

***Midrash Sephardi, Inc. v. Town of Surfside* (Eleventh Circuit) (decided April 21, 2004; argued by Assistant Attorney General R. Alexander Acosta)**
Two synagogues sued the town of Surfside, Florida, alleging that a zoning ordinance excluding churches and synagogues from the business district, where private clubs and lodges were permitted, violated the Religious Land Use and Institutionalized Person Act (RLUIPA). The town counterclaimed, seeking an injunction prohibiting the synagogues from continuing to operate in the business district. The district court granted summary judgment for the town. The synagogues appealed. The Eleventh Circuit reversed and remanded, holding that the synagogues had standing to challenge their exclusion from the business district and that the zoning ordinance failed the meet the requirements of strict scrutiny because it was not narrowly tailored to advance the town's stated interest in retail synergy.

***United States v. Harris* (Fifth Circuit) (decided April 27, 2005; argued by Principal Deputy Assistant Attorney General Sheldon Taylor Bradshaw)**
The defendant-appellee, a police captain, was convicted of federal civil rights violations for excessive use of force with a police baton on an intoxicated suspect. On appeal, the conviction was affirmed in part and vacated and remanded in part, and on remand, the district court granted the defendant-appellee's motion under 28 U.S.C. 2255 to vacate his conviction and sentence. The government appealed. The Fifth Circuit reversed, holding that defense counsel's decision not to call available character witnesses was not objectively unreasonable and that defense counsel's decision not to call the defendant-appellee to testify on his own behalf did not prejudice the defendant-appellee.

***Conley v. United States* (First Circuit) (argued May 6, 2005, by Deputy Assistant Attorney General Bradley J. Schlozman)**
In this criminal case, the defendant-appellee, a police officer, was convicted of perjury and obstruction of justice, arising from his testimony before a grand jury investigating the alleged beating of a plainclothes police officer by other officers. After several appeals and remands, the district court granted a motion to vacate sentence, ruling that the prosecution's wrongful withholding of evidence deprived the defendant-appellee of a fair trial. The government appealed. The First Circuit affirmed, holding that that a *Brady* violation warranting a new trial occurred when the government withheld a FBI memorandum indicating that the key witness had expressed uncertainty about his

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recollection of the incident, and rejecting the government's argument that the *Brady* violation did not prejudice the defendant-appellee because the memorandum was cumulative of other impeachment evidence in his possession prior to trial.

United States v. Tennessee **(Sixth Circuit) (decided June 23, 2005; argued by Counsel to the Assistant Attorney General Gordon Dwyer Todd)**
The federal government brought an action, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, against the State of Tennessee, alleging that the state failed to provide humane conditions to mentally retarded residents of a state-operated care facility. After judgment was entered in the federal government's favor, underlying findings were adopted for a related putative class action, and the class action plaintiffs and intervenor were named as intervenors in the federal government's case. The parties moved for entry of a mediation settlement agreement. The district court denied the motion. On appeal, the Sixth Circuit held that the district court improperly had relied on testimony not on the record in its decision to reject the parties' settlement agreement, and vacated and remanded the case to the district court with instructions to reconsider the settlement agreement and a new settlement agreement the parties had since created.

United States v. Serrata **and** ***United States v. Fuller*** **(Tenth Circuit) (decided October 6, 2005; argued by Deputy Assistant Attorney General Bradley J. Schlozman)**
In this criminal case, three correctional officers were convicted of offenses related to an assault on an inmate at a county correctional facility in New Mexico and obstruction of justice. The correctional officers appealed their convictions and sentences. The government cross-appealed to challenge the district court's grant of downward departures to all three officers. The appeals were consolidated for disposition. The Tenth Circuit held that the evidence was sufficient to support the officers' convictions for deprivation of rights under color of law and obstruction of justice. On the sentencing matters, the Tenth Circuit ruled that the district court abused its discretion in granting a downward departure based on extraordinary family circumstances, employment records, and community service and clearly erred in sentencing the officers based on facts found by a preponderance of the evidence. The Tenth Circuit also noted that the record indicated that the district court mistakenly believed that the sentencing guidelines were mandatory. Accordingly, the court of appeals affirmed the convictions but remanded for resentencing.

George v. Bay Area Rapid Transit District **(Ninth Circuit) (argued February 13, 2006, by Deputy Assistant Attorney General Bradley J. Schlozman)**
Two Bay Area residents brought suit under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and California state law, claiming that certain Bay Area Rapid Transit (BART) stations were not accessible to persons with disabilities. BART responded that its compliance with the ADA regulations, promulgated by the Department of Transportation (DOT), constituted compliance as a matter of law. The district court granted summary judgment in favor of the plaintiffs, holding that the DOT regulations on which BART relied were arbitrary and capricious and therefore invalid. BART appealed. The United States had not been a party nor participated in the case prior to appeal, but

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filed a brief as *amicus curiae* before the Ninth Circuit, arguing that the DOT regulations were not arbitrary and capricious. The Ninth Circuit vacated the district court's order and remanded so that the United States could defend the validity of the DOT regulations. The Ninth Circuit did not express any view on the merits.

***Digrugilliers v. Consolidated City of Indianapolis* (Seventh Circuit) (argued September 12, 2007, by Special Counsel for Religious Discrimination Eric W. Treene)**
In this case under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the plaintiff-appellant, a church pastor, sued the city of Indianapolis alleging that the requirement under the city's zoning code that the church obtain a variance to make religious use of the land in the city's commercial office-buffer districts violated RLUIPA, as nonreligious institutions were not required to obtain a similar variance. The pastor moved for a preliminary injunction, which the district court denied. On appeal, the Division argued as *amicus curiae* in support of the pastor that RLUIPA forbids a local government to impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. Subsequently, the Seventh Circuit concluded that the RLUIPA claim in this case had sufficient merit to require the district court consider the other factors germane to a decision on whether to grant or deny preliminary injunction, and reversed and remanded for such consideration.

b. Please also indicate the name of all other political appointees in the Justice Department who argued an appellate civil rights case since January 2001, and provide a brief summary of the case.

Answer: Since January 2001, other political appointees in the Department of Justice have argued the following cases:

***United States v. Ferreira*, 105 Fed. App. 198, 2004 WL 1559206 (9th Cir. 2004) (Counselor to the Attorney General D. Kyle Sampson)**
Defendant, a former prison guard, was convicted, in the United States District Court for the Central District of California, David O. Carter, J., of willfully depriving an inmate of his constitutional right to be free from excessive force under color of law, and making false statements to FBI officers. Defendant appealed. The Court of Appeals held that evidence was sufficient to find that prison guard specifically intended for an inmate to inflict unreasonable force on the victim inmate.

***United States v. Ballinger*, 395 F.3d 1218 (11th Cir. 2005) (Assistant Attorney General for the Criminal Division Christopher A. Wray)**
Defendant was convicted in the United States District Court for the Northern District of Georgia, William C. O'Kelley, J., 153 F.Supp.2d 1361, of destruction of religious property on account of its religious character, and he appealed. The Court of Appeals, 312 F.3d 1264, reversed and remanded. On rehearing en banc, the Court of Appeals, Marcus, Circuit Judge, held that: (1) Congress' commerce authority includes the power

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to punish a church arsonist who uses the channels and instrumentalities of interstate commerce to commit his offenses, and (2) defendant's use of channels and instrumentalities of interstate commerce to carry out arson spree in which he crossed interstate borders six times to set fire to 11 churches in four states within a month met statutory requirement that the offense be "in interstate commerce."

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SUBMISSIONS FOR THE RECORD

Statement of Chairman Patrick Leahy
Senate Judiciary Committee
On the Nomination of Grace Chung Becker
To be Assistant Attorney General for the Civil Rights Division
March 11, 2008

Today we hear from Grace Chung Becker, the administration's nominee to be the Assistant Attorney General in charge of the Civil Rights Division, a position created over 50 years ago by Congress to safeguard Americans' civil rights.

Over the last seven years, the Bush-Cheney administration has compiled one of the worst civil rights records in modern American history, and called into question its commitment to the intent of Congress in passing the Civil Rights Act of 1957. Today, I hope that we will hear from Ms. Becker what she intends to do to reverse this administration's dismal record, and help return this Division to its core mission of enforcing civil rights protections for minorities, including how the Division will enforce the laws that protect against discrimination in the workplace, schools, and voting booths.

I thank Senator Kennedy for chairing this important hearing today, which continues the process of rebuilding the integrity and independence of the Justice Department. This is the seventh hearing the Committee has held since last September on executive nominations, as we continue to work to restock and restore the leadership of the Department of Justice in the wake of the scandals of the Gonzales era. We have held confirmation hearings for the new Attorney General, the new Deputy Attorney General, the new Associate Attorney General, and so many others.

Beginning at the start of the 110th Congress, the Judiciary Committee's oversight efforts revealed a Department of Justice gone awry. The leadership crisis came more and more into view as Senator Specter and I led a bipartisan group of concerned Senators to consider the United States Attorney firing scandal, a confrontation over the legality of the administration's warrantless wiretapping program, the untoward political influence of the White House at the Department of Justice, and the secret legal memos excusing all manner of excess.

This crisis of leadership has taken a heavy toll on the tradition of independence that has long guided the Justice Department and provided it with safe harbor from political interference. It shook the confidence of the American people. Through bipartisan efforts among those from both sides of the aisle who care about Federal law enforcement and the Department of Justice, we joined together to press for accountability that resulted in a change in leadership at the Department, with the resignations of the Attorney General and many high-ranking Department officials – including Wan Kim, who held the position to which Ms. Becker has been nominated, and who announced his resignation last August.

It is perhaps nowhere more apparent than at the Civil Rights Division the extent to which the current administration has blunted the Justice Department's sense of direction and tainted its sense of purpose. Mr. Kim left the Division at a time of serious concerns about

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the Division's priorities, hiring, and decision-making process. Indeed, the extent of politicization at the Civil Rights Division is one of the most grievous problems we uncovered in the course of our investigation. The actions of former Civil Rights Division officials like Brad Schlozman and Hans von Spakovsky reveal the true cost of injecting corrosive political influences into the work of the Justice Department. It should come as no surprise that the result and, of course, the intent of the political makeover of the Civil Rights Division has been a dismal enforcement record. I hope that Ms. Becker can reassure the Committee that she took no part in the improper political activities that are currently the subject of a joint investigation by the Department's Office of Inspector General and Office of Professional Responsibility.

Regrettably, the politicization of the Division's hiring practices continues to compromise its ability to address the problems that have plagued the Division for the last seven years. Reports of a number of departures of expert career staff are threatening the ability of the Division to carry out its mission. I am concerned that President Bush's political appointees have reversed longstanding civil rights policies and impeded progress in the area of civil rights. There are disturbing reports that career lawyers have been shut out of the Division's decision-making process, that civil rights enforcement on behalf of racial minorities has sharply declined, and that the Department has packed the Division with attorneys who have no experience enforcing civil rights.

We have received testimony about a staff exodus in the Division office that reviews "pre-clearance" petitions under Section 5 of the Voting Rights Act. The failure to adequately staff this vital office threatens the historic role that the Division has played in preventing new barriers to voting. Jurisdictions that are required to file "pre-clearance" petitions have a history of voter access problems. If there are not enough resources dedicated to this office, that is the wrong decision, and one that threatens to roll back the progress we have made in overcoming shameful barriers erected around the ballot box to fence out minorities. When he signed the Voting Rights Act Reauthorization and Amendments Act into law in 2006, the President promised to enforce it vigorously. I hope Ms. Becker will be able to tell the Committee how, under her leadership, the Division will enforce this landmark civil rights law that gives the government the authority to fulfill constitutional guarantees of the right to vote.

I also remain concerned with the Division's movement away from a focus on enforcing core civil rights protections for minorities, including laws that protect against discrimination in the workplace, schools, voting booths, and elsewhere. Information available to Congress and in recent news reports underscores a decline in the number of traditional civil rights cases filed by the Division, amounting to about a third fewer pending cases as there were at the beginning of 2003. This is particularly true in the important area of combating hate crimes, where I remain concerned about the Department's willingness to vigorously prosecute racially motivated violence and prevent the proliferation of hate symbols perpetrated against minority communities.

The Republican whip has urged Committee attention to the President's nominations to fill the many vacancies resulting from the resignations of the Gonzales leadership group at

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the Justice Department. We continue to do so today, despite criticism for holding these hearings and making them a priority. We held a prompt two-day hearing on the nomination of Michael Mukasey to be Attorney General, a hearing on the nomination of Judge Filip to be Deputy Attorney General, a hearing on the nomination of Kevin O'Connor to be Associate Attorney General, and hearings on a number of key Assistant Attorneys General and heads of Justice Department offices.

Last week, we reported out three more executive nominations, including Mr. O'Connor's nomination to the number three position at Justice. That brings the total number of executive nominations already reported favorably by the Committee in this Congress to 26. We have also discharged four additional nominations, all of which were confirmed. By the time we adjourned the first session of this Congress, the Senate had already confirmed 22 executive nominations, including the confirmations of nine U.S. Attorneys, four U.S. Marshals, and nominees to nine other important positions. With three more high-level Justice Department nominations pending on the Senate calendar and the nomination we consider today, we are poised to make even more progress.

Of course, we could have made even more progress had the White House sent us timely nominations to fill the remaining executive branch vacancies with nominees who will restore the independence of federal law enforcement. There are now 19 districts across the country with acting or interim U.S. Attorneys instead of Senate-confirmed, presidentially-appointed U.S. Attorneys, and for which the administration has still failed to send the Senate a nomination. For more than a year I have been talking publicly about the need to name U.S. Attorneys to fill these vacancies and urging the President to work with the Senate.

Ms. Becker currently serves as the Acting Assistant Attorney General in charge of the Civil Rights Division. Her nomination represents perhaps this administration's last chance to reverse its dismal legacy and return the Division to its historic mission of safeguarding civil rights. I hope that Ms. Becker proves to be the kind of nominee who understands that the Civil Rights Division is entrusted with defending our most precious rights as Americans, including our fundamental right to vote and our rights against discrimination.

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JOHN WARNER
VIRGINIA

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ENVIRONMENT AND PUBLIC WORKS
SELECT COMMITTEE ON INTELLIGENCE
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SENATOR JOHN WARNER STATEMENT
TO THE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF GRACE CHUNG BECKER
TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION,
DEPARTMENT OF JUSTICE

March 11, 2008

Chairman Leahy, Senator Specter, and my distinguished colleagues on the Judiciary Committee, I am pleased to introduce to the Committee Ms. Grace Chung Becker, who has been nominated to serve as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

Since December 2007, Ms. Becker has served as the Acting Assistant Attorney General for the Civil Rights Division. In this capacity, she supervises nearly 700 employees and serves as the principal officer for enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin.

Ms. Becker has impressive legal experience within all three branches of the federal government. Prior to assuming her present position, she was the Deputy Assistant Attorney General within the Civil Rights Division. Previously, she served with distinction as an Associate Deputy General Counsel at the Department of Defense, as Special Advisor to the Assistant Secretary of the Army, as a federal prosecutor within the Criminal Division of the Justice Department, as Assistant General Counsel for the United States Sentencing Commission, and as a Counsel on the Senate Judiciary Committee staff.

In addition, Ms. Becker clerked for the Honorable James L. Buckley on the United States Court of Appeals for the District of Columbia Circuit and also for the Honorable Thomas Penfield Jackson of the United States District Court for the District of Columbia.

With respect to her academic credentials, Ms. Becker is a magna cum laude graduate of the Wharton School of Finance at the University of Pennsylvania. She earned her law degree from Georgetown University Law Center, again graduating magna cum laude, and with honors as a member of the Order of the Coif and as Associate Editor for The Georgetown Law Journal.

While Ms. Becker is a native of New York by birth, she has been a resident of the Commonwealth of Virginia since 1993. I am pleased to note that her impressive resume includes several years of participation with the committees of the Fairfax County School Board, service with her neighborhood association, and leadership within the Korean American Coalition Board of Directors.

I look forward to the Committee's review of Ms. Becker and her qualifications and to the full Senate's consideration of her nomination.

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