



Department of Justice

STATEMENT OF

**THOMAS E. PEREZ
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,
AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

“THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE”

PRESENTED

DECEMBER 3, 2009

**Statement of
Thomas E. Perez
Assistant Attorney General
Department of Justice
Before the
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives
At a Hearing Entitled
“The Civil Rights Division of the Department of Justice”
December 3, 2009**

Chairman Nadler, Chairman Conyers, Ranking Member Sensenbrenner and members of the Subcommittee, thank you for the opportunity to testify today. It is a great privilege to appear before you as the newly installed Assistant Attorney General for the Civil Rights Division at the Department of Justice. I look forward to an active and ongoing dialogue with this Subcommittee and the full Judiciary Committee regarding the work of the Division. Today’s hearing marks an auspicious beginning for that dialogue.

This hearing comes at a pivotal time for the Division. Attorney General Holder in recent months repeatedly has called the Civil Rights Division the crown jewel of the Justice Department. More than 50 years after its creation, the Division’s mission and scope have grown exponentially, but the Division continues to serve as the conscience of the nation within the Federal government.

However, there can be no denying that there have been times when the Division failed to fully live up to its mission. The two GAO reports that provide the impetus for this hearing,¹ along with the January 2009, Inspector General’s report, underscore the point that the Division, in recent years, was not doing all that it could to fulfill our responsibility to enforce all the civil rights laws fairly and aggressively. That changed immediately this past January.

From the moment the new Administration took office, the Division, with the Attorney General’s full backing, took decisive steps to emphasize our traditional enforcement priorities in each of the four litigating sections that were the subject of the GAO reports, and throughout the Division as a whole. With respect to the three recommendations regarding case management that are contained in the GAO report, I concur with all of them, and we are working to comply fully with the GAO’s recommendations.

¹*DOJ’s Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, GAO-09-938R (September 30, 2009); *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections’ Enforcement Efforts from Fiscal Years 2001 through 2007*, GAO-10-75 (October 2009).

In the months before my arrival, much was accomplished under the leadership of the Attorney General and Acting Assistant Attorney General Loretta King, as the Division recommitted to using all the arrows in its quiver and vigorously enforcing all the laws for which it has responsibility. I want to personally and publicly thank Loretta for her service as the senior career attorney in the front of the Civil Rights Division across multiple administrations. Our mission in the coming months and years is one of restoration – recommitting to the Division’s core mission – and transformation – equipping ourselves to address effectively the challenges of the 21st Century.

First and foremost, we recognize that committed career attorneys and professional staff are the most critical single ingredient to fulfilling our enforcement responsibilities. Unfortunately, between 2003 and 2007 more than 70 percent of the Division’s attorneys left, leading to a significant depletion of capabilities and institutional knowledge. Although many of these attorneys were replaced through new hires, many of those who left were seasoned and dedicated litigators, and their departure represented a significant loss for the Division. One of the Division’s first priorities has therefore involved revamping our hiring processes to ensure that the very best candidates for the job are selected through a process that is conducted fairly, transparently and without any consideration of the candidates’ political views.

We have just completed this year’s hiring for the Attorney General’s Honors program, a process that was conducted successfully under our revised Honors hiring policy, which is publicly available on the Division’s website. Our Honors hiring program was directed by two longtime career lawyers in the Division, and every lawyer who participated in the interview process is a career lawyer who was recommended by a career section chief. The Honors hiring policy provided guidance in the development of new hiring policies for other positions in the Division as well, and we look forward to using those policies in the coming fiscal year as we hire the best and brightest new attorneys to strengthen the Division’s ranks.

Meanwhile, during the first ten months of this Administration, the Division has worked to significantly expand our enforcement activities, including in the four litigating sections – Employment, Voting, Housing and Special Litigation – which were the subject of the GAO report. This expansion is entirely consistent with the Civil Rights Division’s obligation to enforce *all* the laws for which it has enforcement responsibilities, rather than picking and choosing which laws to enforce.

Equal Employment Opportunity

Our Employment Litigation Section enforces Title VII of the Civil Rights Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA) on behalf of service members in the civilian workforce. The GAO report noted the increased number of USERRA matters. In FY 2009, we received 175 USERRA referrals from the Department of Labor, a 75 percent increase over FY 2008, and we established a “fast track” program to address and resolve suitable cases administratively, thereby preventing a backlog.

Since January 20th of this year, we have filed a total of 27 Title VII and USERRA suits – a record number. Nine of these suits were filed under Title VII. The remaining 18 suits were filed under USERRA – almost double the number (11) of such suits filed during all of FY 2008. Also, the number of cases resolved through consent decree or settlement has more than doubled over FY 2008, from 16 to 41.

Restoring vigorous enforcement of Title VII, including pattern and practice cases, is one of our highest priorities. Since January 20th, we have filed three Title VII pattern or practice suits, obtained settlements in five pattern or practice cases that provided significant prospective and remedial relief, and opened ten full pattern or practice investigations of State and local governmental employers with respect to employment opportunities for African Americans, Latinos and women. Also, in July, we obtained a highly significant victory in *U.S. v. City of New York, NY*, when the district court granted summary judgment for the United States and plaintiffs-intervenors on the issue of liability. In the *City of New York* case, we challenged the city's use of two written examinations for entry-level firefighters as having unlawful disparate impact on African Americans and Latinos. In the relief phase, we are seeking, among other things, priority hiring and monetary relief for nearly 300 African-American and Hispanic victims of the challenged examinations.

Fair Housing

The Housing and Civil Enforcement Section has worked since January to step up its enforcement of the Fair Housing Act. Over the past 10 months, the Section filed 36 cases under the Act, including 19 pattern or practice cases. During this same period, the Housing Section obtained 21 Fair Housing Act consent decrees, including 17 pattern or practice consent decrees. Because the Division depends to a significant extent upon HUD to refer cases under the Fair Housing Act, Section 504, and Title VI of the Civil Rights Act of 1964, the Division also is working to strengthen and expand our working relationship and collaboration with HUD.

Last month, in a landmark Fair Housing Act case, the Division announced that the owners of numerous Los Angeles apartment buildings located in the Koreatown section of the city agreed to pay \$2.7 million to settle allegations that they discriminated against African-Americans, Hispanics and families with children, preferring to rent units instead to Korean tenants. This was the largest monetary settlement ever obtained by the Justice Department in a Fair Housing Act case alleging discrimination in the rental of apartments, and it sent a clear message that the Civil Rights Division is open for business.

The Division also won a major victory (as friend of the court) when the full U.S. Court of Appeals for the Seventh Circuit recently ruled that the Fair Housing Act applies to post-acquisition discrimination in a case brought on behalf of Jewish condominium owners who were instructed by the condominium association to remove the traditional *mezuzah* from the outside doorframe of their residence.

In response to the housing crisis, moreover, the Division has ramped up fair lending enforcement, and recently filed two lawsuits. We brought one suit against a bank that charged African-Americans a higher interest rate than whites for home mortgage refinance loans and redlined majority-African-American areas of west central Alabama. The other suit, brought against a bank that made car loans, alleged national origin discrimination, where the dealerships working with the bank were charging higher markups for African-American and Latino borrowers. We also authorized suit and ongoing investigations of major players in the subprime market.

Finally, in enforcing the Servicemembers Civil Relief Act (SCRA), the Division won an important victory when a court ruled that lienholders are strictly liable under SCRA for selling cars belonging to servicemembers without a court order.

Voting Rights

The voting rights of all Americans are at the core of equal opportunity and equal justice, and the Voting Section has been working to renew its efforts to protect these rights. In FY 2009, the Section filed ten affirmative lawsuits – five more than were filed during the previous fiscal year – and increased the number of amicus briefs filed as well.

In September, we achieved an important victory on behalf of American military personnel and other overseas citizens when a Federal court in Virginia ruled that the State violated the voting rights of these citizens by failing to mail absentee ballots in sufficient time for them to be counted in the November 2008 general election, as required by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The brave women and men who risk their lives to protect our nation must be given the opportunity to vote and to have their votes counted, and this case will help to ensure that opportunity. Also, I am grateful to the Congress for passing the Military and Overseas Voters Empowerment Act amendments to the UOCAVA this fall, which we believe will significantly facilitate voting by our military and U.S. citizens living overseas.

We have also stepped up our voting rights enforcement in Indian Country. In October, the Division notified Shannon County, South Dakota, that it had authorized a lawsuit under Section 203 of the Voting Rights Act to protect the voting rights of American Indians who speak the Lakota language and have limited English proficiency; we currently are seeking to negotiate a resolution. This would be the first new lawsuit to protect the voting rights of Native Americans since 2000.

Additionally, the Voting Section is working to prepare for a massive influx of redistricting submissions that will result from the 2010 Census. The Section's role in ensuring that the redistricting process does not undermine the voting rights of minority communities remains a critical component of our efforts to protect the franchise for all Americans, and we will be ready.

Civil Rights of Institutionalized Persons and Discriminatory Policing

The Special Litigation Section has been engaged in investigations, litigation and compliance activities to protect the constitutional rights of institutionalized persons. In September, for example, the Division filed suit under the Civil Rights of Institutionalized Persons Act (CRIPA), against Erie County, New York, regarding unconstitutional conditions at two correctional facilities. After an extensive investigation, the Division concluded that the institutions violated the constitutional rights of pre- and post-trial inmates confined at the facilities. Our suit addresses immediate constitutional concerns regarding suicide prevention and mental health care, protection from harm, medical care and environmental health and safety.

In addition, we have continued to investigate, litigate and monitor compliance in a number of other cases involving psychiatric hospitals, correctional institutions, residences for persons with developmental disabilities, and juvenile facilities.

The Section has also opened several investigations where we are evaluating whether there is evidence of a pattern or practice of discriminatory policing in violation of section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. These include an investigation, begun in September 2009, of the police departments in East Haven, Connecticut, looking into discriminatory police practices, unlawful searches and seizures, and excessive use of force; and Suffolk County, New York, examining allegations that police have failed to investigate hate crimes involving Hispanics, failed to protect Hispanics from hate crimes, and discouraged reporting of such crimes.

The four sections examined in the GAO report and discussed above play a critical role in advancing the nation's civil rights agenda, but they do not represent the full breadth of the Civil Rights Division's work. We have made important strides in other areas as well. Some examples of our recent work in other areas follows.

Educational Opportunities

In an effort to advance civil rights in the educational arena, we have worked to ensure that students receive equal educational opportunities without respect to race, gender, religion, national origin, language barrier or disabilities. The Division's Educational Opportunities Section continues to engage in compliance and enforcement activities in school districts throughout the nation.

In July 2009, the Section helped achieve a victory for female high school athletes, filing an *amicus* brief in support of Florida parents who filed suit under Title IX after the State's high school athletic association adopted discriminatory reductions in the game schedule for female student athletes. Our work helped prompt a resolution, pursuant to which the high school athletic association agreed to restore the full schedule and to refrain from making any policy changes that treat one gender differently from the other.

Criminal Civil Rights Enforcement

In our civil rights criminal enforcement efforts, the Civil Rights Division's Criminal Section in Fiscal Year 2009 filed more civil rights criminal cases than ever before and more hate crimes cases than it did during any of the previous eight years. Hate crime enforcement is one of the Administration's and the Department's top civil rights priorities. Sadly, as the recently released 2008 FBI statistics make clear, bias motivated violence remains disturbingly prevalent across the United States. According to the most recent FBI Hate Crimes Report, in 2008, over 50 percent of the reported hate crimes were motivated by racial bias and the number of reported crimes directed at Latinos increased for the fifth year in a row, amounting to a 40 percent increase between 2003 and 2008. Using our previously existing hate crimes authority, as well as the additional authority we now have due to the passage of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, which is discussed below, we will continue to vigorously prosecute those who threaten and harm others out of hate.

We also have successfully prosecuted numerous significant cases involving official misconduct of law enforcement officials, including Federal and State corrections officers, local police, and sheriff's deputies. For example, last month, two Tennessee state corrections officers pled guilty to violating the civil rights of an inmate and then lying about it during state and federal investigations. The officers had repeatedly kicked and punched a handcuffed inmate without provocation and in violation of the inmate's constitutional right to be free from cruel and unusual punishment. In another plea last month, a Wyoming state trooper was sentenced by a federal judge to 15 years for kidnapping a Wal-Mart truck driver and for using his official firearm to commit a crime. The trooper had planned to kill the driver, stage an accident, and use the incident to extract a monetary settlement from Wal-Mart.

Finally, we have continued the Division's commitment to combating human trafficking, a form of modern-day slavery that deprives its victims of their fundamental rights guaranteed by the Thirteenth Amendment. The Criminal Section has been the leader in this fight since the 1930s, and this past year, we continued its record of bringing unprecedented numbers of involuntary servitude and slavery prosecutions, restoring the Constitutional rights and dignity of human trafficking victims and bring traffickers to justice. In recent months, for example, we secured sentences of 30, 35, and 40 years, respectively, for the five lead defendants, and successfully prosecuted five other defendants, in a sex trafficking scheme that compelled young Guatemalan women and girls into prostitution in the Los Angeles area.

Disability Rights

The Division's Disability Rights Section has been conducting a wide range of enforcement activities, including its Project Civic Access to increase compliance by State and local governments with Title II of the Americans with Disabilities Act of 1990 (ADA). The Project sends investigators, architects and attorneys to conduct on-site reviews of State and local government facilities. These reviews have resulted in agreements reached with the State and local government entities to address compliance issues by rectifying access issues at a wide range of facilities, including administrative buildings, courthouses, police and fire stations and jails, transportation facilities, parks and recreation facilities, libraries, museums, polling places, and emergency and domestic violence shelters.

The Administration also has declared it a priority to enforce the Supreme Court's *Olmstead* decision – to enable persons with disabilities to live in an appropriate, integrated, and community-based setting . In June, President Obama commemorated the 10th anniversary of the *Olmstead* decision by launching the “Year of Community Living,” a new effort by Department of Health and Human Services and the Department of Housing and Urban Development to assist Americans with disabilities by improving access to housing, community supports, and independent living arrangements. In keeping with the Administration's commitment, the Division has moved to intervene in the remedial phase of a major case brought in New York, in which the State was found to be in violation of Title II of the ADA and Section 504 of the Federal Rehabilitation Act because the State's practice of segregating institutionalized individuals with mental illness and placing them in adult homes was not the most integrated setting available. The Division is also filing “friend of the court” briefs in two other cases. The first challenges the State of Virginia's decision to build a new 75-bed institution for persons with mental disabilities that will isolate persons with disabilities who have already been determined to be capable of living successfully in the community rather than placing them in community-based housing. The second case in Connecticut challenges the State's system of housing persons with disabilities in nursing homes rather than in supported housing that will allow them to become participants in their communities.

In addition, the Division has been following through on its proposal to amend its Title II and Title III ADA regulations applicable to State and local governments and public accommodations. The Division is currently working to finalize the revised ADA regulations and intends to issue final regulations in 2010.

The Division is also continuing its hugely successful, multi-pronged ADA outreach program that includes a major website with links to the ADA, federal regulations, policies, and informal guidance along with updates about recent developments in ADA enforcement, a full-time professionally staffed telephone line responding daily to questions from the public, and an active technical assistance program providing speakers and written materials in response to requests from individuals and organizations nationwide.

Finally, the Division is preparing regulations to implement the Title II and Title III provisions of the Americans with Disabilities Act Amendments Act of 2008, which overturns several Supreme Court decisions and broadens the definition of disability. The Department is jointly sponsoring a series of four town hall meetings this fall with the Equal Employment Opportunity Commission (EEOC), which has responsibility for the Act's employment provisions, and expects to have its proposed rule for Titles II and III published early in 2010.

Coordination and Review

Finally, the Division's Coordination and Review Section, which has responsibility for ensuring that Federal agencies and federally-assisted programs comply with civil rights laws, held a major conference in July that focused on Title VI of the Civil Rights Act of 1964. The conference, which was attended by about 450 representatives of most Federal funding agencies, major community and advocacy groups and funding recipients, was the first of its kind since 1977. The conference was highly successful and received overwhelmingly positive reviews.

A Civil Rights Division for the 21st Century

These are just a few examples of the stepped up activities of the Civil Rights Division during the past ten months. I must emphasize, however, that while fully restoring the Division's commitment to its traditional mission is absolutely essential, it is not enough. The Civil Rights Division also must be transformed to meet the civil rights challenges of the 21st century.

As the late Senator Ted Kennedy often reminded us, civil rights remain the unfinished business of America. In 2009 and beyond, meeting current-day and emerging civil rights challenges means not only continuing to combat the sort of blatant discrimination that persists, but also tackling the more subtle, yet equally dangerous, forms of discrimination that infect so many of our institutions.

Today, despite great gains, too many people of color find themselves powerless in the face of discriminatory housing and lending. Too many students still lack the quality education all children are guaranteed by law. Too many Americans with disabilities find themselves shut out or set apart from professional and personal activities that non-disabled Americans take for granted. Too many new Americans who came to this nation seeking the same freedom and opportunities that our parents and grandparents sought, find themselves the targets of bigotry and hate.

A Civil Rights Division for the 21st Century must and will address the vast injustice done by the explosion in inappropriate subprime lending and the subsequent foreclosure crisis, which, though it has touched every corner of our nation, has impacted people of color and threatened the stability of their communities at far greater rates than their white counterparts. There are Federal laws ensuring fair lending and fair housing, and these laws must be enforced to address the persistent inequalities that are on the books.

It must and will work to create services, programs and public facilities that are accessible to individuals with disabilities, recognizing that they have a vast contribution to make to our society and our communities that can only be maximized if they have equal access. It means recognizing – as the Supreme Court did in its landmark *Olmstead* decision – that segregating people with disabilities in institutions is every bit as wrong as segregating children of color in inferior schools.

A Civil Rights Division for the 21st Century understands how our nation's reaction to the 9/11 terrorist attacks affected the Arab-American and Muslim-American communities, and is working to be sure we don't fall into the trap of believing that we either have national security and safe streets *or* we protect civil rights. Continuing the Division's work to combat religious discrimination, to promote religious freedom, and to support the civil rights of religious minorities to practice their faith, we are litigating employment discrimination cases on behalf of Muslim-Americans and Sikh-Americans who have been denied their right to wear religious head-covering in their place of employment.

It understands that civil rights are human rights, and that America must set an example for others. We are actively engaging with the State Department to ensure that the Civil Rights Division has the opportunity to contribute its expertise and experience in dialogues about civil rights issues in the international context.

A Civil Rights Division for the 21st Century recognizes that there are places where our laws fall short, and we are working to fill the gaps. The recent passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act stands at the forefront of our efforts to fill one of those gaps to strengthen our civil rights enforcement. I am grateful to Congress for passing this landmark legislation, which has been over a decade in the making.

For the first time in the history of this nation, the Federal government has authority to prosecute violent hate crimes committed because of the victim's sexual orientation, gender, gender identity, or disability. The new law also enhances our ability to prosecute hate crimes based on the victim's race, religion, or national origin, or military status, and enables us to provide assistance to State, local, and tribal officials in their investigation and prosecution of hate crimes. This is the first significant expansion of Federal criminal civil rights laws in over a decade, since passage of the church arson statute in the mid-1990s.

Immediately after the new hate crimes bill became law, the Department began implementing it. I sent a letter to all United States Attorneys announcing the law's passage and encouraging them to partner with us and utilize its provisions in appropriate cases. In addition, the Division is preparing guidance and training for those who are responsible for enforcing this new law.

While lesbian, gay, bisexual, and transgender (LGBT) individuals now have Federal protection from hate crimes, they still lack fundamental protection for their right to earn a living. In the United States today, millions of hardworking LGBT individuals are not even protected

from workplace discrimination by our nation's civil rights laws, and have no legal recourse when they are subjected to adverse employment actions. That is why we strongly support Federal legislation like ENDA.

Finally, a Civil Rights Division for the 21st Century cannot measure its performance solely by the number of cases filed and successfully concluded. Outreach to specific communities and constituencies, as well as to the public at large, is critical to proactively deterring and combating discrimination, rather than just reacting to discriminatory acts that have already occurred. However, historically, the Division has taken a largely reactive approach to communicating its work and accomplishments. As a result, we have missed the opportunity to play a role in the broader national dialogues about race and civil rights, even though we have considerable value to add to those conversations. Although I have been serving as Assistant Attorney General for less than two months, this already has begun to change.

Conclusion – The Road Ahead

A little more than one year ago, this nation elected its first African-American President, undeniably a historic achievement for a nation with such a long and complicated history of race relations. But as we look back over the history of the advancement of civil rights in our nation, each moment of great progress was followed by periods of great challenge. In 1963, Dr. Martin Luther King wrote “we have waited for more than 340 years for our constitutional and God given rights.” He and many others helped to secure those rights with the Civil Rights Act of 1964 and the Voting Rights Act the following year. And yet, today, 45 years later, injustice persists.

As a nation, we have made great progress on civil rights, and for more than 50 years, the Civil Rights Division has been an important player in achieving that progress, but as we pass each benchmark, we must turn to face the new challenges ahead.

Establishing a Civil Rights Division for the 21st Century therefore requires restoring *and* transforming the Division – not in an effort to re-create the Civil Rights Division of an earlier era, but rather to prepare ourselves to tackle the challenges before us today, and to ensure we are nimble enough to address the challenges on the horizon.

I know it will not be easy, but the Civil Rights Division will meet the new challenges it faces. We will implement the GAO's recommendations and do much more by enforcing all the laws in fair, aggressive and independent fashion, using all the tools available to us. We will need your help, input, and support, in fulfilling our mission, and I look forward to working with you in the months and years ahead.

Thank you once again for the opportunity to testify. I welcome your questions.