

Attachment IV

<p>had an intimidating effect on voters, and (3) that at least on one occasion they harassed a voter. An African-American man approached sheriff's deputies after they left the scene of a burglary complaining that he was not allowed to vote.</p>	<p>observations.</p>	<p>learned two days after the election that the same man who had approached the deputies on Election Day returned to the polling place and successfully voted. A poll worker observed the presence of the sheriff's cars around the same time they were responding to the burglary, and observed that no voter had been deterred from voting due to the police activity.</p>	<p>allegations raised.</p>
<p>3. It was alleged that the design of the butterfly ballot in Palm Beach County, Florida, violated federal voting rights laws.</p>	<p>The Voting Section opened a matter related to this issue and reviewed federal law for which the Section had enforcement authority to determine if any action was appropriate.</p>	<p>The Voting Section determined that there was no basis for asserting federal jurisdiction.</p>	<p>The Voting Section concluded that because it had no jurisdiction concerning this matter, no further action was warranted. In addition, according to the Voting Section, the new Florida election reform law should help to alleviate faulty ballot design by providing for greater oversight of ballot design.</p>
<p>4. Four state troopers with the Florida Department of Highway Safety and Motor Vehicles ran a driver's license checkpoint on Election Day 2000 in Leon County, Florida. This checkpoint was located near (about a mile from) a voting precinct. Another checkpoint was held in Bay and Escambia Counties. According to a highway patrol official, this checkpoint was not located near a voting precinct.</p>	<p>The Voting Section opened a matter to investigate this issue and asked the Florida State Office of the Attorney General about the checkpoint in Leon County. A Voting Section attorney also spoke with an African-American voter who was stopped at one of the driver's license checkpoints.</p>	<p>The Voting Section's investigation revealed that the Florida Highway Patrol had set up a traffic check stop close to a polling place (about a mile away) located in a predominantly African-American neighborhood. The Voting Section investigation also indicated that the troopers' traffic stop plan had not been pre-approved by their commander, as is the standard procedure. Further investigation revealed that the traffic checkpoint was in effect for about 3 hours, and a higher number of white drivers were stopped than African-American drivers. According to the Voting Section, an African-American voter who was</p>	<p>The Voting Section closed the matter because there was no evidence of intimidation or racial intent to affect or intimidate voters.</p>

012272

Attachment IV

		<p>stopped was treated courteously and proceeded to vote without incident.</p>	
<p>5. A U.S. Representative raised concerns regarding long voting delays in predominantly African-American precincts in DeKalb County, Georgia during the November 2000 election. It was alleged that there were no corresponding delays in majority white precincts. In one predominantly African-American precinct, several hundred voters apparently left the precinct without voting after waiting in line for several hours. In districts with a majority of white residents, voting lines apparently moved quickly with some people being able to vote in less than 15 minutes. In addition, two people complained about possible voting irregularities during a March 2001 election.</p>	<p>A Voting Section attorney met with the following in Georgia to address these concerns: (1) the DeKalb County Elections Supervisor, (2) the Chairman of the DeKalb County Elections Board, (3) the Gwinnett County Elections Supervisor, (4) the president of the DeKalb County NAACP, (5) the Assistant DeKalb County Attorney, and (6) one of the representative's staff members. The Voting Section attorney received and reviewed documents from both counties' elections departments regarding the November 2000 election.</p> <p>The Voting Section attorney requested additional documents from the Assistant DeKalb County Attorney and DeKalb County Elections Supervisor to determine if there was an unequal division of resources among African-American and white districts. These documents outlined the budget for expenses related to the elections from 1998 through 2000.</p> <p>The Voting Section attorney also spoke with the president of the DeKalb County NAACP and the U.S. Attorney for the Northern District of Georgia.</p> <p>The Voting Section attorney spoke with the two persons alleging fraud during the March 2001 election.</p>	<p>The Voting Section attorney's analysis of the documents that DeKalb County provided revealed that most of the county's polling places that stayed open past closing time were located in majority African-American precincts. The polls' extended hours almost uniformly resulted from there being large numbers of people in line as well as insufficient numbers of poll workers and voting machines. The attorney also determined that there had been no unequal division of electoral resources between majority white and majority African-American precincts.</p> <p>According to investigations of the November 2000 election by the county's elections department, the area manager and his assistants at the main precinct of concern failed to contact the precinct office about the long lines and insufficient voting machines. The former area manager also denied the poll workers' requests for additional voting machines, stating none were available. The president of the DeKalb County NAACP, staff in the office of the U.S. Attorney for the Northern District of Georgia, and the DeKalb County Elections Supervisor did not receive complaints related to Election Day in DeKalb County.</p> <p>With respect to the March 2001 allegations, the Voting Section attorney noted that the two</p>	<p>The county implemented the following changes for the March 2001 election: (1) increased the number of voting machines, (2) assigned additional poll workers and managers, (3) assigned at least 10 additional staff members to answer telephones at the Elections Department and installed 10 more telephone lines, and (4) gave the Elections Department and area managers cell phones in case regular telephone lines were busy. The Voting Section determined that a dramatic improvement resulted from these remedial actions and, as a result, closed the matter.</p>

Attachment IV

		persons could not identify the precincts where alleged irregularities occurred, and that they did not have allegations of racial intimidation or vote suppression. The Voting Section attorney determined that their complaints seemed to concern Georgia state law, suggested that they explore their state law remedies, suggested that they contact the county elections department and the office of Georgia's Secretary of State, and asked them to keep the Voting Section attorney informed of developments.	
6. The Voting Section received information that people in Gwinnett County, Georgia who had registered to vote via the Georgia Department of Public Safety (DPS) were not on the voter registration rolls and were not allowed to vote. DPS operated vehicle registration sites in Georgia. Subsequently, DPS began the process of transitioning National Voter Registration Act (NVRA) responsibilities to the state's newly created Department of Motor Vehicles (DMV). It was alleged that voters were turned away from the polls and were not offered provisional ballots. Some voters were told to go to the county registration office, but officials there told them they were not allowed to vote.	The Voting Section spoke with staff in the Georgia Attorney General's office and the Georgia DPS and DMV, a voter who raised the allegations, and the Deputy Director of Elections in the Secretary of State's Office. The Voting Section monitored the transition of NVRA responsibilities from DPS to the new DMV from April 2001 to April 2002.	The Voting Section's investigation revealed that the problem likely arose from the DPS paperless system to obtain and renew a driver's license. The process seemed to result in people believing they had been registered to vote when they had not. A person who indicated the intention to register to vote did not receive any confirmation at the time of the transaction.  The Voting Section's investigation revealed that since DPS implemented a paperless system in 1996, the percentage of those who registered to vote at DPS sites when they applied or renewed their licenses had dropped almost every year. There was also evidence that DPS officials knew of concerns regarding the agency's paperless registration system from its implementation.	The Voting Section closed the matter in April 2002 mostly because the state had created a new agency, the Department of Motor Vehicle Safety, to which responsibility for voter registration was in the process of being transitioned. The Voting Section determined this system would remedy the problem.
7. DOJ, on behalf of the United States, alleged that the St. Louis Board of Election Commissioners' (referred to hereafter as the Board) placement of eligible voters on	Following an investigation, DOJ filed a complaint with the U.S. District Court in the Eastern District of Missouri on August 14, 2002. On the same date,	The Voting Section alleged that the state was in violation of NVRA and filed a complaint.	The consent order gives court jurisdiction over the proceeding until January 31, 2005. The consent order

012274

Attachment IV

<p>inactive status, when combined with election-day procedures that inactive voters were required to follow to restore their active voter status and vote during the November 2000 and March 2001 elections, constituted a removal of those voters from the voter registration rolls in violation of Section 8 of NVRA. As of the November 2000 general election, more than 54,000 registered voters in St. Louis had been designated as inactive and excluded from the lists of eligible voters following a series of mail canvasses that the Board conducted of its voter registration rolls. These mail canvasses did not include the notices required by Section 8(d)(2) of NVRA. The Board did not make an effort to notify inactive voters that their registration status had changed, that their names would not appear on the voter registration lists, or that they would face more administrative efforts on election day before being permitted to vote.</p> <p>As a result, certain eligible, but inactive voters, were not able to vote in the November 2000 general election and March 2001 municipal primary election due to the lack of an adequate infrastructure (i.e., insufficient phone lines, working telephones, and staff) in place to enable voters to complete the verification procedures required by the Board on election day. For the November 2000 election, over 300 eligible inactive voters were able to obtain authorization to vote after going to the Board's headquarters as instructed by the election judges.</p>	<p>DOJ entered into a consent order with the city of St. Louis.</p>		<p>requires the Board to initiate procedures to remedy the problems that occurred during the November 2000 election, such as improved methods of notifying voters who are moved to an inactive status, improved methods of canvassing, and improved resources to process eligible voters not included on the rolls on Election Day. This relief included requiring that every polling place have a complete list of registered voters, including inactive voters, and a polling place locator to assist voters in finding their correct precincts.</p> <p>The consent decree is valid until January 31, 2005. The case remains open to monitor implementation of the consent order.</p>
---	---	--	---

## Attachment IV

## Election-Related Closed Matters and Open Cases Initiated during Calendar Year 2001

No.	Matter/Case	Jurisdiction	Date matter initiated	DJ No.
1	Matter	Florida	March 2001 <sup>a</sup>	Yes
2	Matter	Florida	June 2001 <sup>a</sup>	Yes
3	Matter	Florida	June 2001 <sup>a</sup>	Yes
4	Matter	Florida	August 2001 <sup>a</sup>	No
5	Matter	Broward County, Florida	October 2001 <sup>a</sup>	Yes
6	Matter	Miami-Dade County, Florida	June 2001 <sup>a</sup>	Yes
7	Matter	Miami-Dade County, Florida	June 2001 <sup>a</sup>	Yes
8	Matter (election monitoring)	New York, New York	July 2001	Yes
9	Matter	Georgetown County, South Carolina	April 2001	Yes
10	Matter	Seagraves, Texas	July 2001	Yes
11	Case	Miami-Dade County, Florida	March 2001 (case filed in June 2002) <sup>b</sup>	Yes
12	Case	Orange County, Florida	June 2001 (case filed in June 2002) <sup>b</sup>	Yes
13	Case	Osceola County, Florida	June 2001 (case filed in June 2002) <sup>b</sup>	Yes
14	Case	Berks County, Pennsylvania	March 2001 (case filed in February 2003)	Yes
15	Case	Tennessee	April 2001 (case filed in September 2002)	Yes

Source: DOJ Civil Rights Division.

<sup>a</sup> Each of these Florida matters was initiated in the period shortly after the November 2000 election—i.e., in November or December 2000—and was reported under the general DJ number for Florida discussed previously (see note a under the summary table for November and December 2000 and note c below). The above dates are the dates they received individual DJ numbers.

<sup>b</sup> For the matters that the Voting Section initiated in Florida after the 2000 election, the Voting Section initially used a general DJ number for all work on investigations and inquiries related to the Florida election. This number was opened in November 2000. Subsequently, the Voting Section assigned separate DJ numbers for individual matters. The 2000 matters in Florida and Hillsborough County, Florida, were inadvertently not given an individual DJ number.

Attachment IV

Summary of Election-Related Closed Matters and Open Cases Initiated during Calendar Year 2001

Description based on Voting Section Information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>1. There were allegations made by students at Florida A&amp;M University (FAMU) in Tallahassee (Leon County), Florida, and Bethune-Cookman College in Daytona Beach, Florida, regarding discriminatory treatment of African-American students in the registration process or at the polls. First-time voters, apparently unfamiliar with the registration process, had greater difficulty registering to vote. Older students did not seem to have such difficulty.</p>	<p>The Voting Section's investigation consisted of phone interviews with Bethune-Cookman students, on-campus interviews of FAMU students and student government leaders, and a review of statements taken by a representative of the Service Employees International Union legal department working in association with the NAACP.</p> <p>A Voting Section attorney interviewed three students on FAMU's campus who claimed to experience difficulty voting, but were able to vote. The Voting Section attorney left his contact information with FAMU's student government association for any individuals who wanted to give statements regarding voting problems but could not meet with the attorney.</p> <p>The Voting Section attorney attempted to contact all ten students from Bethune-Cookman, but was only able to speak with three. The attorney sent letters to the remaining students but never received responses to the letters.</p> <p>The Voting Section attorney followed up with his contacts at FAMU, but the Voting Section did not receive any response from students to its efforts to conduct further inquiries. The student government association</p>	<p>The Voting Section determined that the problems were likely attributable to voter confusion, not racial animosity. The Voting Section noted that the incidents of the three FAMU students who successfully voted were isolated incidents, and since each student ultimately voted, the problems they suggested did not suggest a pattern of intimidation or attempted vote denial.</p> <p>The Voting Section concluded that most of the allegations were likely to have been the result of students not being familiar with the voting process. Many students had registered at their permanent home addresses and did not understand they had to re-register in Leon County. The Voting Section found that voter inexperience and confusion were to blame at Bethune-Cookman, not any pattern of discriminatory treatment.</p>	<p>The Voting Section closed the matter because it lacked merit based on the evidence gathered during the investigation.</p>

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	<p>also posted and distributed flyers and sent out internet notices with the attorney's contact information. Neither the attorney nor the student association at FAMU received additional allegations of voting irregularities.</p>		
<p>2. Beginning in 1999, under Florida state law, the state contracted with a firm to compare names of registered voters with names of convicted felons who under Florida law were disqualified from voting. The state elections division sent lists of felon names for each of Florida's 67 counties to election officials in those counties for investigation and purging. The Voting Section was concerned that county and state actions with regards to the purging process may have been flawed and impermissible under NVRA. The Voting Section questioned whether eligible voters had been inadvertently removed from the voter rolls.</p>	<p>The Voting Section reviewed testimony from Florida election officials and representatives of the company that compiled the database and obtained information on how the lists of felons' names were matched to voter registration lists. The Voting Section also did extensive additional investigation to determine whether the method in which Florida compiled a list of felons and how they purged these felons violated any of the statutes enforced by the Voting Section.</p> <p>In addition, the Voting Section reviewed Florida's 2001 election reform law pursuant to Section 5 of the Voting Rights Act. This review included provisions of the new law related to the voter purge procedures that were the subject of the investigation.</p>	<p>The evidence gathered by the Voting Section showed that the matching at the state level was set up in a way that it captured names that were less than definite matches. The Voting Section also learned that after receiving the state-generated list, counties' actions varied. For example, some counties refused to use the list because they perceived it to contain many errors. Other counties sent letters to all the people on the state's list telling them that their names were matched to those of disqualified felons, and they would be required to show their eligibility to vote or be removed from the rolls. The Voting Section determined that evidence gathered for this matter was inconclusive, but showed there was a possibility that voters could have been removed in violation of federal law.</p> <p>With respect to the Section 5 review of the 2001 election reform law, this law was precleared on March 28, 2002 after careful review. Preclearance was granted only after receiving explicit assurances from the Attorney General of Florida describing how the law would be implemented with respect to voter purge lists.</p>	<p>The Voting Section closed the matter in April 2002. The closing memo noted that the new statute appears to require no additional procedures for accurate name matching compared to the old law. It also noted that the new statute appeared to codify a procedure used by many counties under prior law where voters whose names are matched by the state must affirmatively prove their eligibility to avoid removal.</p> <p>However, the Voting Section closing memo also noted that the new voter purge procedures (which included the assurances made by the Attorney General of Florida to protect voters from erroneous purging) had been precleared on March 28, 2002. It further stated that the Florida felon purge statute in effect at the time of the 2000 election no longer existed and that any litigation against it based on how that law was implemented would be moot. Based on these two factors, the matter was closed.</p> <p>The memo also stated that the Voting Section may open a new investigation depending on any information received regarding the operation of the new statute and related regulations.</p> <p>Finally, the closing memo</p>

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
		<p>generated by the state pursuant to the new state law. These assurances included (1) a statement that there would not be a presumption in favor of the accuracy of the statewide database, and any presumption would be in favor of the voter and (2) the appearance of a voter's name on any voter purge list of potentially ineligible voters generated by the state would not by itself confirm a voter's ineligibility, and that the burden of determining ineligibility was on county supervisors of elections, a burden which must meet the highest degree of proof. These assurances were specifically noted when preclearance was issued by the Voting Section.</p>	<p>also made note of pending litigation in the case of <i>NAACP v. Harris</i>, which included allegations that the voter purge list used in 2000 violated the NVRA. Subsequent to the April 2002 closing of this matter, a settlement was reached in this case which required new procedures for how the state was to complete its voter purge lists in the future. This change in voter purging procedures was precleared under Section 5 of the Voting Rights Act in 2003.</p>
<p>3. A newspaper article provided to DOJ by a member of the U.S. Senate provided information that officials in several Florida counties disabled a feature in optical scan voting machines used during the November 2000 election to detect ballots spoiled by over-voting and allow voters to correct the error.</p>	<p>A Voting Section attorney analyzed rates of ballot spoilage in counties that had disabled the spoilage detection function in their optical scan machines and compared those rates to those of ballot spoilage in counties that had not disabled this function.</p>	<p>The investigation found that Florida counties with optical scan machines that activated the spoilage detection technology had lower rates of ballot spoilage than counties that did not have or did not use the technology. Some counties that had this detection feature disabled it on their voting machines. There were also isolated instances where the technology was either disabled or failed to function properly. The Voting Section determined that there was no evidence that the disabling of this feature was done with a discriminatory effect or purpose.</p>	<p>The Voting Section closed this matter because it found no evidence indicating a violation of federal law. Moreover, election reform legislation enacted in Florida in May of 2001 requires all counties to acquire voting machines with precinct-based spoilage detection technology by September 2002. The election reform law also requires counties to activate this technology during voting. The Attorney General, under Section 5 of the VRA, precleared election procedures provided for in this legislation.</p>
<p>4. The U.S. Commission on Civil Rights issued a report that posed questions regarding</p>	<p>The Voting Section reviewed the findings of the Commission's report regarding ballot</p>	<p>Several analyses suggested patterns of racial disparity in the ballot rejection practices</p>	<p>The Voting Section concluded that there was no basis for bringing a Section 2 lawsuit against</p>

Attachment IV

Description based on Voting Section Information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>spoiled ballots in Florida during the November 2000 election. The Commission questioned whether the racial disparity in spoiled ballots that occurred in Florida in 2000 was a violation of Section 2 of the Voting Rights Act. The Commission stated that the U.S. Department of Justice (DOJ) should specifically investigate whether the racial disparity in spoiled ballots violated Section 2.</p>	<p>rejection disparity and several newspaper studies of the spoilage issue. It then prepared a factual and legal analysis of issues raised in the Commission's report to determine if a Section 2 violation had occurred.</p>	<p>of a few Florida counties during one election. However, the Voting Section determined that the disparity alone did not meet the standards for a Section 2 lawsuit. The Voting Section noted that more investigation, analysis, and careful thought would have to be given to the causes of ballot rejection problems in Florida, the actual level of racial disparities, and the role played by state and county officials before a decision could be made concerning a Section 2 violation.</p>	<p>Florida on the basis of the evidence of racial disparities found in spoilage rates. Furthermore, it was determined that because Florida's 2001 election reform law required new election machines, significant steps had been taken by Florida towards remedying the election problems with respect to voting machines. The Voting Section also concluded that it would make sense to monitor the actions of Florida and its counties over the subsequent few years to see whether they would follow through in acquiring new voting machines with error detection technologies and educating voters to see what impact such actions would have on ballot rejection rates.</p>
<p>5. DOJ received allegations of inaccessible polling places and voting booths in Broward County, Florida.</p>	<p>The Voting Section opened a matter and looked into the county's compliance with the Voting Accessibility for the Elderly and Handicapped Act (VAEHA). The Voting Section sent a letter to the Broward County Supervisor of Elections requesting specific information regarding procedures in place to ensure the physical accessibility of polling places for federal elections pursuant to VAEHA.</p> <p>Attorneys from the Voting Section and the Civil Rights Division's Disability Rights Section met with the county supervisor of elections and the supervisor's attorney to discuss physical accessibility of polling places and</p>	<p>Based on information that the county provided, the Voting Section found that the county conducted polling place surveys in 1999 and conducted another survey devised to address the problem of disabled voters' access to the polls. The investigation revealed that the people conducting the surveys had no training in accessibility standards. The county provided the Voting Section attorney with a memo and a plan stating that Florida intended to purchase new touch-screen voting machines with an audio component for the blind or visually impaired, with one such voting machine available per precinct.</p>	<p>As a result of the problems experienced in the 2000 election, the Florida legislature enacted changes to its accessibility requirements for polling places and voting machines. In light of this and the Voting Section's determination that the new Florida law went further than the requirements in VAEHA, the investigation was closed.</p>

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	<p>purchase of new voting machines. The Voting Section and Disability Rights Section's attorneys requested documentation such as copies of county surveys covering accessibility procedures, a list of polling place changes spurred by accessibility concerns; a list of disability community contacts with whom officials from the office of the county supervisor of elections met, and procedures for reassignment or curbside voting. The county provided both attorneys with a demonstration of the new touch-screen voting machines with an audio component for the blind or visually impaired. The Voting Section attorney also contacted the county supervisor of election's attorney requesting information on VAEHA compliance.</p>		
<p>6. It was alleged that a crowd of persons attempted to intimidate election officials on the canvassing board of Miami-Dade County, Florida, during the presidential vote recount after the November 2000 election. It was alleged that this group's activities at the county courthouse during the recount intimidated the canvassing board into abandoning the recount.</p>	<p>The Voting Section attorney reviewed the allegations along with numerous accounts of events that transpired that day.</p>	<p>Based on the information gathered, the Voting Section determined that no cause of action existed under the civil enforcement provisions of the federal voting laws that the Voting Section is charged with enforcing.</p>	<p>The Voting Section concluded that no further investigation was warranted and closed the matter.</p>
<p>7. There were allegations made after the November 2000 election that ballot boxes in two predominantly minority precincts in Miami-Dade County, Florida, had not been picked up on</p>	<p>The Voting Section attorney examined voter turnout data for the two precincts in question. The Voting Section attorney also held discussions with the First Assistant County</p>	<p>The discussions that the Voting Section conducted with counsel for Miami-Dade County indicated that all of the county's ballot boxes had been accounted for on that day. According to the county</p>	<p>The Voting Section closed the matter because it lacked merit. According to the Voting Section, the evidence that the Voting Section collected made it seem doubtful that there were any missing ballot</p>

01228

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
Election Day, and that they were allegedly later found in the polling places.	Attorney in Miami-Dade County, who in turn contacted the county supervisor of elections.	supervisor of elections, the boxes that were later located in the two precincts contained election supplies, not ballots. Analysis of data from the two precincts indicated that both precincts reported voter turnout rates in the expected range given the county's overall turnout rate.	boxes.
8. The Voting Section opened this matter in August 2001 to initiate the monitoring of an election in New York City in November 2001 on the basis of observations made during the November 2000 election. Thirty federal observers and seven DOJ staff members monitored polling place procedures during municipal general elections in 2001 in Kings County (also known as Brooklyn) and in Bronx County. The Attorney General had previously certified both counties for federal observers pursuant to Section 6 of the Voting Rights Act. Also, 17 federal observers and 5 Voting Section attorneys monitored polling place procedures during the general election in 2002 in Brooklyn.	In pre-election activities, two Civil Rights Division attorneys met with officials from the New York City Board of Elections to discuss concerns about preparations for the election, including the need for poll worker training for the election, the need for voting machines to accommodate the number of registered voters, the need for Spanish-language voter registration materials for poll workers to distribute minority language assistance, and consolidation of polling places. A Voting Section attorney also attended four poll-worker training classes. After the election, the Voting Section attorneys met with several Board of Elections officials to debrief them.	Thirty federal observers monitored activities at 31 polling places in Bronx County and 12 polling places in Brooklyn County during the municipal general elections. Three staff members from DOJ's Civil Rights Division and one ALUSA for the Southern District of New York traveled with the observers to provide additional monitoring. Two Voting Section staff members visited six polling places in both counties. During the election, observers found that materials to be displayed to inform Spanish-speaking voters of assistance to interpret the ballot were not always clear or in public view at nearly half of the polling places in both counties. The Board of Election officials were informed of this and took action. These officials noted that it was up to each polling place inspector to display the materials they are given. Poll workers were observed asking voters for identification, which was in violation of New York State law. Board of Election officials were notified of this and went to the polling place to address the issue. DOJ monitors did not witness any Spanish-speaking poll workers at the 12	The Voting Section closed the matter because the monitoring of the election was completed. Voting Section staff could not comprehensively identify failure by individual poll workers to post or provide all materials to Spanish-speaking voters because of the large number of election districts—nearly 2,000—and the small number of observers. However, the Voting Section found that the Board of Elections was very responsive to all of the Voting Section's concerns and sent Board officials to places where problems arose, usually within 30 minutes.

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
		<p>polling locations visited in Brooklyn; this was discussed with Board of Election officials; however, DOJ officials found that appropriate language assistance was available in both counties.</p> <p>Seventeen federal observers and five attorneys from the Civil Rights Division monitored polling place procedures during the general election in Kings County.</p> <p>The Voting Section attorney who attended four poll-worker training classes found that the classes appropriately addressed minority language issues and assistance.</p>	
<p>9. The Voting Section received an allegation from an African-American voter that a supervisor at a voting precinct in Georgetown County, South Carolina, discriminated against African-American voters during the 2000 presidential election. The voter alleged that the supervisor treated African-American voters in a rude and discriminating manner. In talking to the complainant and others, it was learned that there were also alleged voter registration problems during the 2000 election related to precinct changes and the local DMV.</p>	<p>The Voting Section attorney interviewed officials with the Georgetown County Board of Registration and Elections, representatives of the Republican and Democratic parties, voters, and an attorney representing the county. The Voting Section attorney also interviewed an official who managed the Georgetown County DMV office regarding the second-hand allegations from a Democratic party representative regarding possible registration problems at the local DMV.</p> <p>After interviewing the DMV official and examining the forms that the DMV provides to drivers applying for new licenses to simultaneously allow them to register to vote, the Voting Section</p>	<p>Voting Section staff wrote to the Voter Registration and Election Commission for Georgetown County outlining the allegations concerning the rude treatment by the poll worker and the Voting Section's findings and asked the commission how it planned to respond.</p> <p>The county's Voter Registration and Election Commission responded in writing that the election supervisor was informed by letter that she would be reassigned to another precinct and not permitted to serve in a supervisory capacity for the June 11, 2002, election. She decided not to work the June 2002 election.</p> <p>Other issues examined in this investigation were not raised with the county in this letter. With respect to the precinct change allegations, the Voting Section learned that conclusion as to proper</p>	<p>The Voting Section closed the matter on March 9, 2004. As of that date, the Voting Section had not received additional complaints concerning the treatment of African-American voters in Georgetown County or about voting registration issues previously investigated. According to the complainant, the election held on June 11, 2002, went smoothly.</p>

012283

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	<p>attorney noted that the form on the DMV driver's license application did not contain a box for people to check if they wanted to register to vote and that this might not adhere to the NVRA provision for a simultaneous process to apply for a driver's license and register to vote. In addition, in the interview with the employee in the local DMV office, the Voting Section attorney learned that they may have been only asking people applying for new drivers' licenses, not people renewing their licenses, if they wanted to register to vote. However, this employee further informed the Voting Section attorney that in October 2000 she received instructions from the head of the state DMV to ask every person who was applying for a driver's license whether he or she wished to register to vote, and she followed that instruction through the election.</p>	<p>voting precincts was likely the result of a change in the method of identifying addresses of voters. With respect to allegations about the DMV procedures, the Voting Section received no complaints from voters who indicated that the alleged problems at the DMV existed or resulted in denying them the right to vote. In addition, after the examination of the DMV forms and interview with the local DMV employee, it was concluded that there did not appear to be a violation of the NVRA.</p>	
<p>10. The Voting Section received a complaint alleging that the Seagraves Independent School District and the City of Seagraves, both in Texas, held elections without bilingual judges or bilingual training.</p>	<p>A Voting Section attorney visited Seagraves and the Seagraves Independent School Board. The Voting Section also contacted a newspaper to review published articles regarding the school board election.</p>	<p>Information in a newspaper article indicated that the allegations were untrue, and that all election material was produced in English and Spanish. The Voting Section attorney was told that confusion existed for all voters because of the present districting system.</p> <p>The Seagraves City Secretary wrote a letter to the Voting Section attorney stating that each year the city names a Hispanic judge who is also bilingual. The City</p>	<p>The Voting Section attorney suggested that the town should make an effort to educate voters of district boundaries by methods other than newspaper advertising. Subsequent to the election, the city of Seagraves sent a map of district boundaries and candidates running in each district to each city household. The Voting Section closed the matter.</p>

012284

## Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
		Secretary also provided the Voting Section attorney with minutes of prior city council meetings highlighting the nomination and approval of the election judges, and a sample ballot printed in both English and Spanish.	
11. During the November 2000 election, Miami-Dade County, Florida, allegedly engaged in practices that prevented the county's Creole-speaking Haitian-American voters with limited ability to speak English from securing assistance at the polls. In circumstances where the county permitted voter assistance from persons of the voters' choice, the scope of the assistance was limited (e.g., standing next to voters during poll worker demonstrations) and of little value to voters once they entered the voting booths.	After a full investigation, the Voting Section initiated litigation against Miami-Dade County because of its alleged violation of Section 208 of the Voting Rights Act. Prior to initiating litigation, the Voting Section conducted an investigation of the county's voter assistance practices during the 2000 election. DOJ filed a complaint with the U.S. District Court in the Southern District for Florida on June 7, 2002.	Evidence gathered during the investigation demonstrated that Creole-speaking Haitian-American voters at several precincts were denied assistance from persons of their choice in violation of Section 208 of the Voting Rights Act. Oftentimes, only poll workers, who did not speak Creole, were permitted to assist the voters, and they limited their assistance to voter demonstrations outside the voting booths. The Voting Section did not find evidence that noncompliance with Section 208 was the result of intentional discrimination. In this regard, it was noted that the Miami-Dade Board of County Commissioners passed ordinances in 1999 and 2000 mandating that Haitian-Creole ballot translations be available in voting booths located at precincts where "significant" numbers of Haitian-American people vote.	A consent order was entered into on June 17, 2002, that, in part, prohibited the county from denying Haitian-American voters assistance from persons of their choice and mandated that the county take certain steps to prevent violations of Section 208 and to redress the harm caused those voters, such as modifying poll worker training to include instruction on how to handle requests for language assistance. The consent order is in effect through December 31, 2005. The case is open to monitor implementation of the consent order.
12. As described in DOJ's complaint, DOJ alleged that various election practices and procedures in Orange County, Florida, unlawfully denied or abridged the voting rights of Spanish-speaking citizens. The challenged practices concerned the alleged failure of the county to: (1) provide an	After investigating these allegations, DOJ filed a complaint in the U.S. District Court for the Middle District of Florida on June 28, 2002, and entered into a consent decree with Orange County on October 9, 2002.	In the complaint, the Voting Section alleged that Orange County violated VRA Sections 203 and 208.	The case is open to monitor implementation of the consent decree. The consent decree permits DOJ to monitor elections in Orange County from October 9, 2002 until January 31, 2005. The consent decree also mandates policies and procedures that Orange County must adopt with

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>adequate number of bilingual poll workers trained to assist Hispanic voters on Election Day; (2) ensure that poll officials allow Spanish-speaking voters to have persons of their choice assist them in casting their ballots; and (3) translate certain written election materials into Spanish.</p>			<p>regards to treatment of Spanish-speaking voters. The consent decree is valid until January 31, 2005. DOJ did not contend that Orange County's failure to adhere to VRA Sections 203 and 208 was the result of intentional discrimination.</p>
<p>13. As described in DOJ's complaint, DOJ alleged that Osceola County, Florida, engaged in various election practices and procedures that unlawfully denied Spanish-speaking citizens an opportunity equal to that of other citizens to vote. The challenged practices concerned: (1) the failure of poll officials to communicate effectively to Spanish-speaking voters necessary information concerning their eligibility to vote, voter registration status, identification requirements, and polling place changes and assignments; (2) the refusal of poll officials to allow certain Spanish-speaking voters assistance in voting by persons of their choice; and (3) hostile remarks by poll officials directed towards Hispanic voters with limited English proficiency.</p>	<p>After investigating the matter, DOJ filed a complaint in the U.S. District Court for the Middle District of Florida on June 28, 2002, and entered into a consent decree with Osceola County on July 22, 2002.</p>	<p>In the complaint, the Voting Section alleged that Osceola County violated VRA Sections 2 and 208.</p>	<p>The case is open to monitor implementation of the consent decree. The consent decree allows DOJ to monitor elections held in Osceola County from the date of the consent decree through January 31, 2005. It specifies procedures that the Osceola County Board of Elections must implement with regards to the treatment of Spanish-speaking voters and efforts the county must engage in to facilitate voting by Spanish-speaking voters. The consent decree is valid through January 31, 2005. DOJ did not contend that Osceola County intended to deny Spanish-speaking voters an equal opportunity to participate in the political process.</p>
<p>14. It was alleged that, in conducting elections in Reading City, Pennsylvania, Berks County denied Hispanic citizens with limited English proficiency an equal opportunity to participate in the political process and elect the representatives of their choice.</p>	<p>After extensive investigation, which included the monitoring of several elections held in the county, the Voting Section initiated litigation against Berks County because of its alleged violation of several provisions of the Voting Rights Act. DOJ filed a complaint with the U.S. District Court for the Eastern District</p>	<p>In the complaint, the Voting Section alleged that actions contributing to the denial by Berks County to provide Hispanic citizens with limited English proficiency an equal opportunity to participate in the political process and elect the representatives of their choice included the following: poll officials directed hostile remarks</p>	<p>On July 17, 2003, DOJ filed a motion for (1) permanent injunction and entry of final judgment that sought to permanently enjoin the county's conduct of elections using policies, practices, procedures, and methods that violate certain VRA requirements and (2) the court to issue an order authorizing OPM to appoint federal</p>

## Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	of Pennsylvania on February 25, 2003.	at, and acted in a hostile manner toward, Hispanic voters to deter them from voting and make them feel unwelcome at the polls, poll officials engaged in election practices including the failure to communicate effectively with Spanish-speaking voters regarding necessary information about their eligibility to vote, voter registration status, identification requirements, and polling place changes and assignments, and turning away Hispanic voters at the 2001 and 2002 elections; and Berks County failed to recruit, train, and maintain an adequate pool of Hispanic and bilingual poll officials despite their knowledge of the needs of Hispanic voters with limited English proficiency.	examiners pursuant to VRA to serve in Berks County through June 30, 2007. The court granted the United States' motion on August 20, 2003. The case remains open for monitoring and several elections have been monitored since entry of the consent decree.
15. As described in DOJ's complaint, DOJ alleged that the state of Tennessee engaged in practices that unlawfully denied certain citizens full and complete opportunities to register to vote in elections for federal office as mandated by NVRA. The challenged practices included the failure of the state and agency officials to: (1) provide applications to register to vote simultaneously with applications for motor vehicle driver's licenses (including renewal applications); (2) request only the minimum amount of information necessary to prevent duplicate voter registration and enable state election officials to assess the eligibility of the applicant and to administer voter registration and other part	After investigating this matter, DOJ filed a complaint against the state of Tennessee in the U.S. District Court of Tennessee on September 27, 2002. On that same day, the state of Tennessee entered into a consent decree with DOJ.	In the complaint, the Voting Section alleged that Tennessee violated provisions in NVRA.	The case is open to monitor implementation of the consent decree. The consent decree requires the state and state agencies to develop uniform procedures with regards to the voter application process and the implementation of NVRA and report progress to DOJ annually while the consent decree is in effect. The consent decree expires on August 1, 2005.

**Attachment IV**

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
of the election process; (3) distribute voter registration applications with every application for public assistance or services to persons with disabilities; and (4) transmit completed voter registration applications in a timely manner.			

## Attachment IV

## Election-Related Closed Preliminary Investigation and Matters and Closed Cases Initiated during Calendar Year 2002

No.	Preliminary Investigation/Matter/Case	Jurisdiction	Date investigation or matter initiated	DJ No.
1	Preliminary investigation	Hinds County, Mississippi	November 2002	No
2	Matter (election monitoring)	Apache and Navajo Counties, Arizona	September 2002	Yes
3	Matter (election monitoring)	Broward County, Florida	November 2002	Yes
4	Matter (election monitoring)	Duval County, Florida	November 2002	Yes
5	Matter	Georgia	October 2002	No*
6	Matter	Minnesota	October 2002	Yes
7	Matter	New Jersey	October 2002	Yes
8	Matter (election monitoring)	Bexar County, Texas	October 2002	Yes
9	Matter	Hidalgo County, Texas	December 2002	Yes
10	Case	Oklahoma	August 2002 (case filed in September 2002)	Yes
11	Case	Texas	March 2002 (case filed in March 2002)	Yes

Source: DOJ Civil Rights Division.

\*According to the Voting Section, this matter did not receive a DJ number inadvertently.

## Summary of Election-Related Closed Preliminary Investigation and Matters and Closed Cases Initiated during Calendar Year 2002

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>1. The wife of a soldier from Hinds County, Mississippi, assigned to Guantanamo, Cuba, alleged that her husband and approximately 50 other soldiers from that county did not receive their absentee ballots in the mail. Hinds County acknowledged receiving their requests in mid-September of 2002, and the circuit clerk confirmed they were mailed in the first week of October 2002.</p> <p>The Mississippi Secretary of State's office suggested that the soldiers fax in federal ballots but was not sure the ballots would be counted. That office also suggested to the soldier's wife that she contact the Voting Section. She reported to the Voting Section that soldiers from Madison and Rankin counties, also in Mississippi, did not receive their ballots until after the election. She also contacted the Assistant U.S. Attorney (AUSA) for Hinds County.</p>	<p>A Voting Section official discussed the allegation with an official in the Federal Voting Assistance Program (FVAP) under the Department of Defense (DOD), who said that someone in Hinds County told FVAP on November 20, 2002, that about 20 ballots had been sent to soldiers in Guantanamo. Voting Section staff also phoned the AUSA in Jackson, Mississippi, and noted in a memo that the AUSA had directed a local Federal Bureau of Investigation (FBI) agent to interview the chancery clerk, the registrar, and all others in the chain of custody of the ballots. The Voting Section also discussed asking FVAP to monitor transit of absentee ballots to soldiers from Hinds and Brandon Counties.</p>	<p>The AUSA told the soldier's wife that an investigation revealed the ballots had been lost in the mail. The FBI agent concluded that the county officials had mailed the ballots to the soldiers, but they had been lost or disappeared. The private company that processed mail for the county told the FBI agent that they were unable to check the zip codes of mail processed on a particular day.</p>	<p>The Voting Section closed the preliminary investigation after the AUSA concluded, and the Voting Section agreed, that there was no basis for bringing charges against anyone involved in the handling of the ballots because the ballots had been lost in the mail and no further action was needed.</p>

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	during the next election in response to the soldier's wife January 2003 request that the Voting Section keep these counties on its "radar screen."		
<p>2. On November 5, 2002, federal election observers and Voting Section staff monitored polling place activities at 21 locations in Apache and Navajo Counties, Arizona. The Attorney General, pursuant to VRA Section 6, had certified these counties for federal observers. Since then, federal observers have documented problems related to the counties' inability to provide consistently effective Navajo language assistance to voters and other related circumstances affecting the Navajo voting population.</p> <p>The Voting Section was concerned about the following issues related to the primary held in September 10, 2002, and the general election held in November 5, 2002: (1) the counties' provision for Navajo language assistance, (2) voters being turned away at the polls, (3) crossover voting, and (4) polls not opening on time. During the 2000 election cycle and 2002 primary, federal observers documented several problems with the counties' provision of Navajo language assistance to voters. The Voting Section suggested that both counties distribute cassette tapes containing Navajo language ballot translations to poll workers. The counties committed to preparing and distributing the tapes to poll workers. Officials from both counties also informed the Voting Section that they would use updated flip charts for the November election. These charts, which were used for the September primary at the Voting Section's suggestion, displayed pictorial representations and written Navajo translations of each of the offices on the primary election ballot.</p> <p>There had been confusion in previous elections among many</p>	<p>In September 2002, the Voting Section met with the Apache County Election Director, the Apache County Deputy County Attorney, the Navajo County Election Director, the Navajo County recorder, and two Navajo County outreach workers to discuss several issues related to elections in the two counties. The Voting Section provided suggestions on how to prevent prior problems from recurring. The Voting Section observed the November 2002 election.</p> <p>The original poll worker training schedules that the two counties had provided to the Voting Section allotted approximately 2 hours for training. The Voting Section suggested having all-day training sessions, and the schedules were revised to allot 6-8 hours for training.</p> <p>The Voting Section suggested that both counties provide each polling place on the Navajo Reservation with voter registration lists from both counties, and train poll workers to check both lists and check with the appropriate county election department before turning voters away. Both counties agreed to adopt this suggestion. The Voting</p>	<p>The counties' implementation of their Navajo Language election information program was inadequate. While the counties provided language assistance to many voters, the assistance was frequently insufficient and failed to provide consistent and accurate language translation of the offices and propositions on the ballot's 14 propositions. The Voting Section concluded that the counties must improve and expand their training program for interpreters.</p> <p>The federal observers reported that the interpreters and poll workers believed more training in Navajo language translation was necessary. Some poll workers told the observers that the audiotapes containing Navajo translations were too long and confusing.</p> <p>One polling place was not well organized, resulting in very long lines. The Voting Section reported this to the Navajo County Elections Director, who sent an outreach worker to remedy the problem. The line was moving more quickly by mid-afternoon.</p> <p>The number of voters turned away from the polls was less than during the September</p>	<p>A November 22, 2002, memo discussing the monitoring of the November 5, 2002, election indicated that the Voting Section would meet in the future with election officials from both counties to discuss the November 5, 2002, election and develop methods to improve the counties' provision of language assistance and overall Election Day performance. The matter was closed after the election. According to the Voting Section, this is standard Voting Section procedure when irregularities are observed during election coverage.</p> <p>In the case of Navajo language assistance in these counties, the Voting Section stated that such outreach has been continuous for many years. Another memo discussing compliance and outreach efforts since the 2002 election indicates many improvements in Navajo language assistance efforts as a result of this outreach, including: (1) improved poll worker training which included the use of pictorial flip charts to assist voters in</p>

012290

Attachment IV

Description based on Voting Section Information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>elderly Navajo voters who live near the Navajo/Apache county line about polling place and voter registration. These voters often vote in different locations for tribal and state/federal elections. Tribal elections do not recognize county boundaries. Poll workers at polling places near the county line apparently turned away dozens of elderly voters because of voting location confusion during the 2000 primary and general elections and the 2002 primary. In 2000, poll workers gave affidavit ballots to other crossover voters in the mistaken belief that the ballots would be accepted later. However, since these voters were not registered in the counties where they voted, their votes were considered invalid.</p>	<p>Section also expressed concern about polling places that opened late for the September primary. The counties agreed to address this prior to the November 2002 election.</p>	<p>primary. However, while all the polling places had both counties' registration books, poll workers at most locations did not use them. Some did not know the books were available. At one Apache County location, observers reported that the Navajo county list was not present. The Voting Section informed the county elections director, who showed the Navajo County book to the polling place inspector. The poll workers had not removed the book from the elections supply box. The Voting Section felt that more training and practice would make the poll workers more familiar with this new system. There were no complaints about polls not opening on time.</p>	<p>understanding the ballot; (2) outreach and voter registration efforts on the reservation at various events; (3) the opening of new early voting locations on the Navajo Reservation; (4) the opening of a new satellite election office on the reservation to disseminate voter information and register voters; and (5) greater cooperation among the counties providing Navajo language assistance.</p>
<p>3. Voting Section personnel and 2 AUSAs monitored 84 precincts in Broward County, Florida, during the November 2002 election.</p>	<p>Actions taken by DOJ staff included interviewing the clerk of the precinct where a white male precinct worker who allegedly harassed African-American voters was employed about any complaints or problems with the assistant precinct clerk in question. DOJ staff spoke with four voters at this precinct regarding their experience voting and asked election officials to make chairs available for the disabled and elderly waiting in line to vote. They contacted county election officials about a voter who was told he could not vote because he had already sent an absentee ballot, the precinct clerk eventually verified that the voter</p>	<p>Voting Section staff provided assistance to help correct issues that arose during the monitoring. Examples of issues/problems observed were: (1) African-American voters felt somewhat harassed by a white male precinct worker; (2) a poll official did not want to allow a person to vote who said he had requested an absentee ballot but did not receive it; and (3) persons were turned away because of precinct changes due to redistricting, because they moved, and for other reasons.</p>	<p>The Voting Section closed the matter because the election being monitored was completed.</p>

Attachment IV

Description based on Voting Section Information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	<p>had not been sent an absentee ballot, and the voter was allowed to cast his vote on election day.</p> <p>With regard to the absentee ballot issue, DOJ staff advised the poll official to contact the Broward County Election Board. In addition, DOJ staff: (1) gave a voter the toll-free telephone number for the Voting Section because the voter wanted to complain about the lack of voting machines; (2) asked a poll clerk and poll workers if they had received complaints about not having enough voting machines; and (3) spoke with two voters who complained about a precinct being hard to find.</p>		
<p>4. At the request of Florida's Secretary of State, the Voting Section monitored the election in November 2002 in Duval County, Florida.</p>	<p>Voting Section attorneys monitored the election and facilitated the resolution of problems that arose by communicating proper election procedures to the Supervisor of Elections. Prior to monitoring the election, Voting Section attorneys met with the Supervisor of Elections, minority leaders in the community, leaders of the NAACP, and representatives from the local Democratic and Republican parties. They exchanged telephone information and invited each person or group to contact them with details of any problems that they might help address. They also provided guidance on issues that might arise to provide a</p>	<p>While monitoring the election, the Voting Section found various areas of clarification and improvement. One issue involved absentee ballots and Florida law allowing a person who requested an absentee ballot but did not submit it to vote at the polls. There was confusion when absentee ballots were submitted but rejected as being incomplete because they lacked voters' signatures and voters then being able to vote at the polls. Voters who submit absentee ballots are considered to have voted and cannot vote at the polls on election day if the absentee ballot is rejected.</p> <p>Also, poll workers had given incorrect ballots to</p>	<p>The Voting Section closed the matter because the election being monitored was completed.</p>

## Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
	<p>common understanding of action that should be taken if a particular problem arose.</p> <p>The Voting Section attorneys worked with the Supervisor of Elections to improve election processes and were invited by the Supervisor of Elections to monitor elections in April and May 2003 to further improve upon their election processes.</p>	<p>some voters. Voters were turned away who lacked signed photo identification and were not allowed to vote by provisional ballot. There were also a few instances of insensitivity to minority voters and voters with disabilities.</p>	
<p>5. Georgia state law requires counties to have absentee ballots on hand 45 days before a general election. Georgia missed the September 20, 2002, deadline for the November 5, 2002, general election because of the compressed election schedule in 2002. The 45-day deadline was set to comply with federal mandates to make it easier for U.S. military personnel stationed outside the United States to vote. Georgia had compressed its 2002 primary and runoff election schedules such that the runoff was held only 49 days before the November 5 general election. This precluded the printing of the general election ballot in time for the mailing deadline required under state law. Georgia election officials had contacted FVAP during the first week of October regarding the state's compliance with the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA).</p> <p>Catoosa County ballots omitted the names of the Republican candidate for the U.S. Senate and the Republican gubernatorial candidate from the ballot. An allegation was made that this, among other absentee ballot irregularities, violated UOCAVA because the correct ballots, even if sent at the time this concern was raised on October 18, 2002, would not be received in time.</p> <p>Georgia's Secretary of State asked DOJ to bring suit against the state to extend the deadline for receipt of</p>	<p>FVAP advised the Voting Section that a senior official in Georgia's Elections Division said that election officials in each of Georgia's counties would photocopy all necessary ballots and send them to every military and overseas citizen absentee voter from whom an application had been received in time. All 154 Georgia counties had done this by October 7.</p> <p>A Voting Section attorney asked the source of the allegation in Catoosa County to keep in touch and gave the person who made the allegation the phone number and Web site for FVAP for additional information about FVAP's role in this process. The Voting Section attorney contacted FVAP, and a FVAP official agreed to contact officials in Catoosa and Ben Hill counties to get copies of their ballots and get back to the Voting Section attorney. The Voting Section attorney also contacted a state election official.</p>	<p>FVAP favored going forward with the suit that Georgia's Secretary of State had suggested, but the Voting Section did not because (1) the number of voters affected was very small, less than 132 overseas; (2) UOCAVA was amended in 1986 to add the federal write-in absentee ballot as a back-up ballot when timely requested ballots do not reach voters in a timely matter (the Voting Section relies on the use of the back-up ballot as a remedy in UOCAVA lawsuits brought in primary elections, and had no reason to believe it was an inadequate remedy); and (3) the Voting Section believed the Secretary of State's true interest in the lawsuit stemmed from the large number of regular absentee ballots that were mailed late, and such ballots could not be part of any UOCAVA remedy.</p>	<p>The Voting Section closed the matter.</p>

## Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>military and other absentee ballots.</p> <p>6. The Voting Section conducted an investigation under UOCAVA and monitored a lawsuit in Minnesota over absentee ballots used in the November 2002 general election. At issue was the removal of Senator Paul Wellstone's name on the ballots and issuance of new ballots. Senator Wellstone died 11 days prior to the election, and former Vice President Mondale was designated the replacement candidate for the Democratic-Farmer-Labor party. This party argued for mass mailing of new absentee ballots, and the Republican party argued to do the mailing based on requests.</p>	<p>In an e-mail, the Voting Section attorney expressed concern about ballots being mailed, filled out, and returned between October 31 and November 5 (6 days).</p>	<p>The Voting Section monitored state actions to address this issue.</p>	<p>The Voting Section closed the matter after the state Supreme Court issued an order addressing the absentee ballot issue. The order specified the procedures for absentee ballots that included various options based on whether a voter had or had not already voted for Senator Wellstone.</p>
<p>7. A suit arose from the resignation of Senator Robert Torricelli from the general election and ballot for Democratic nomination to the U.S. Senate. The New Jersey Democratic party brought suit to secure a declaration that the New Jersey Democratic State Committee was permitted to select a qualified candidate to replace Sen. Torricelli. The New Jersey Supreme Court ruled in favor of the state Democratic party and required that a new ballot be prepared under the direction of the state Attorney General and a state court judge. Military and overseas ballots were to be given precedence and an explanatory letter was to be sent to all voters who received the new ballots. The Voting Section was concerned about the late transmittal of ballots to military and overseas voters.</p>	<p>The Voting Section prepared a discussion memo evaluating the impact that the New Jersey Supreme Court ruling would have on overseas absentee voters. The Voting Section monitored the New Jersey Democratic party lawsuit and state remedies to address this issue.</p>	<p>The Voting Section noted that late transmittal of ballots to voters by airmail generally raises concerns that overseas voters would not have sufficient time to receive, mark, and return their ballots to local election officials. The Voting Section staff determined that New Jersey state law contains several unique features that obviate the need for 20-40 days of roundtrip airmailing. In addition, DOD provides a backup ballot available at military installations and U.S. embassies/consulates. This is referred to as a federal write-in absentee ballot.</p> <p>The Voting Section noted that the question might arise regarding how the state would address ballots that had already been transmitted to overseas voters and may have already been returned. The Voting Section determined that this was a question for state officials to resolve, and that the Voting</p>	<p>The Voting Section concluded that New Jersey state law provides for several methods for UOCAVA voters to participate in federal elections over and above the use of regular absentee ballots sent by airmail. The Voting Section closed the matter due to lack of merit.</p>

Attachment IV

Description based on Voting Section Information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>8. An attorney for Bexar County, Texas, requested, in a letter to the Voting Section dated October 18, 2002, expedited review of changes in the county's early voting process in the joint general and special election on November 5, 2002. Changes included: (1) the one-time use of two-page ballots for partisan contested races, (2) procedures for counting ballots with straight-party votes, and (3) one-time use of a single two-sided ballot for partisan contested races supplemented by a separate sheet with duplicate voting instructions for the November 5, 2002, general election. Prior to that request, the League of United Latin American Citizens filed suit in U.S. District Court for the Western District of Texas alleging that Bexar County implemented changes to the conduct of the November general election without obtaining preclearance from DOJ.</p>	<p>The Chief of the Voting Section wrote a letter back to the attorney for Bexar County. The Voting Section had telephone discussions with various people regarding the ballot format issues.</p>	<p>Section planned to raise this issue when speaking with state officials in October 2002.</p> <p>In a letter dated November 1, 2002, the Voting Section stated that the Attorney General did not interpose any objection to the specified changes, but noted that Section 5 of the Voting Rights Act provides that failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of the changes.</p> <p>After the League of United Latin American Citizens filed the lawsuit, Bexar County advised the court that they initiated Section 5 preclearance submission procedures on October 18, 2002, and October 21, 2002. The county had not obtained preclearance from DOJ at the time the lawsuit was filed. The court agreed with both parties that the changes were required and allowed the changes to proceed pending the preclearance. On October 31, 2002, the court decided to retain jurisdiction over the case through the conclusion of the 2002 election process and ordered the parties to advise the court as to their positions on the case on or before December 1, 2002.</p>	<p>The Voting Section closed the matter because it granted preclearance for the changes.</p>

## Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>9. A U.S. Representative sent a letter to the Attorney General regarding possible voter suppression in Alabama, Arkansas, Florida, Indiana, Louisiana, Maryland, Michigan, New Jersey, New Mexico, Pennsylvania, and Texas. In Arkansas, Louisiana, and Maryland, it was alleged that African-Americans were victims of voter suppression. In New Jersey and Texas, allegations of voter suppression involved Hispanics. The victims of voter suppression in the other states were not specified.</p> <p>According to the Voting Section, many of the matters referred to in the letter were matters under the jurisdiction of the Criminal Division and were being investigated by that Division when the letter was received. The Voting Section investigated two of the allegations referred to in the letter, including one in Hidalgo County, Texas, where it was alleged that the Republican party intimidated Hispanic voters countywide to dampen their turnout at the general election. The second allegation that the Voting Section investigated that was referred to in the letter was in New Jersey; the Voting Section opened a matter in 2003 to investigate this allegation (see information provided in this attachment for 2003).</p> <p>The most direct form of alleged intimidation in Hidalgo County was reported to have occurred when two poll watchers for a Republican candidate challenged Hispanic voters at early voting on the basis that a study indicated that 13,000 dead or ineligible voters were in the county's voter registration rolls. The Republican party held a press conference two weeks before the election where party representatives alleged that voter fraud could be a significant problem with the number of people listed incorrectly on the voter rolls.</p>	<p>A Voting Section memo referred to an allegation received from the U.S. Representative regarding possible intimidation at the November 2002 election held in Hidalgo County, Texas. The Voting Section attorney requested several pieces of documentation from the county elections administrator, including newspaper articles, letters between the elections administrator and the Republican elections administrator, and information regarding a study regarding the possibility of 13,000 dead or ineligible voters on the county voter rolls. The Voting Section attorney spoke with Hispanic voters and other minority contacts. The Voting Section attorney also analyzed voter turnout data for Hidalgo County and compared it to the state of Texas for 2002 and previous elections.</p>	<p>The Voting Section determined that Hidalgo County's election administrator handled the situation well by expelling the poll watchers when the voting supervisors alerted the election administrator that two poll watchers for the Republican candidate were making random challenges to Hispanic voters.</p> <p>The Voting Section further determined that efforts on the part of the Republican party did not dampen minority turnout and did not discover instances of voter intimidation at the polls on election day. The Voting Section noted that minority contacts in the county: (1) did not think that the allegations of dead voters on the rolls dampened turnout; (2) did not believe that the challenges made by the two poll watchers caused fewer Hispanic voters to vote; and (3) did not report problems of voter intimidation at the polls. The Voting Section did not find apparent differences between the voter turnout data in the 2002 election compared to other elections.</p>	<p>The Voting Section closed the matter on June 25, 2003, because it lacked merit. The Voting Section attorney observed that there was a tense atmosphere in Hidalgo County between some of the white Republicans and the Hispanic citizenry. The Voting Section recommended that this is an area that should be monitored in future elections.</p>
<p>10. As described in DOJ's complaint, DOJ alleged that the state of Oklahoma was not in compliance with UOCAVA. Election</p>	<p>After an expedited investigation, DOJ filed a complaint in the U.S. District Court for the</p>	<p>In the complaint, the Voting Section alleged that the state of Oklahoma violated</p>	<p>The consent decree required the state to take corrective actions so that all</p>

Attachment IV

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>officials in Oklahoma could not mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of the September 17, 2002, primary runoff election to allow voters to receive the ballot, cast a vote, and return the ballot to election officials by the deadline established by state law.</p>	<p>Western District of Oklahoma on September 12, 2002, and entered into a consent decree with the state of Oklahoma on September 17, 2002.</p>	<p>UOCAVA.</p>	<p>uniformed military personnel and citizens living overseas who filed a timely request to receive an absentee ballot are given the opportunity to vote. The state did so through, among other things, the passage of UOCAVA compliance legislation in May 2003.</p>
<p>11. As described in DOJ's complaint, DOJ alleged that as a result of the compressed period of time between the Texas primary and runoff elections, election officials in the state of Texas failed to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of the April 9, 2002, federal primary runoff election to allow such voters to receive the ballot, cast a vote, and return the ballot to election officials by the deadline established by state law.</p>	<p>After an expedited investigation, DOJ filed a complaint and motion for a temporary restraining order and preliminary injunction in the U.S. District Court for the Western District of Texas on March 22, 2002.</p>	<p>In the complaint, the Voting Section alleged that the state of Texas violated UOCAVA.</p>	<p>The court entered a temporary restraining order and preliminary injunction on March 25, 2002, permitting qualified Texas voters to use federal write-in absentee ballots for the April 9, 2002, election. According to the terms of the court order, the state was required to take actions to remedy absentee ballot issues in the future. This included permitting voters to submit write-in ballots if their ballots are not sent to them in time and counting the write-in ballots as valid as long as the voters living outside the United States are qualified to vote in Texas. A stipulation of dismissal was entered in February 2004 following passage by the state legislature of legislation remedying the United States' complaint.</p>

012297

Attachment IV

Election-Related Closed Matter Initiated during Calendar Year 2003

No.	Matter	Jurisdiction	Date matter initiated	DJ No.
1	Matter	New Jersey	January 2003	Yes

Source: DOJ Civil Rights Division.

Summary of Election-Related Closed Matter Initiated during Calendar Year 2003

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
<p>1. This matter was the second matter opened by the Voting Section in response to the November 2002 letter from a U.S. Representative referred to in the previously described 2002 matter for Hidalgo County, Texas. There were allegations of voter intimidation in New Jersey. According to a newspaper article, e-mails were sent to Latino lawyers urging them to engage in an aggressive campaign to ensure ballot fairness. Attorneys for both the Democratic and Republican National Committees presented their case before the U.S. district court. The judge ruled a few days before the November 2002 election that there was "nothing sinister" in the Republican ballot fairness plan and characterized the plan as legitimate campaign activity.</p>	<p>The Voting Section attorney contacted a Latino political activist in the New York metropolitan area, the Treasurer of the New Jersey Hispanic Bar Foundation, and a community activist and attorney based in Newark, New Jersey.</p>	<p>The people that the Voting Section attorney contacted were not aware of the e-mail or any other threats or intimidation tactics against Latino voters. The Voting Section noted that its investigation yielded results similar to the judge's findings—that the ballot fairness plan mentioned in the e-mail did not raise concerns about Latino voter intimidation during the November 2002 general election.</p>	<p>The Voting Section closed the matter because it lacked merit.</p>

012290

## Attachment V

## Comments from the Department of Justice



U.S. Department of Justice  
Civil Rights Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

August 27, 2004

William O. Jenkins, Jr.  
Director  
Homeland Security and Justice Issues  
United States Government Accountability Office  
Washington, D.C. 20548

Re: *Department of Justice's Activities to Address Past Election-Related Voting Irregularities - Draft Report GAO-04-1041R*

Dear Mr. Jenkins:

Thank you for providing the Department of Justice with a copy of a draft of the Government Accountability Office (GAO) report entitled "Department of Justice: Activities to Address Past Election-Related Voting Irregularities." This letter constitutes the Justice Department's formal comments, and I request that it be included in the final report.

The Department appreciates the GAO's, and the requesting members', interest in this most important issue. Indeed, of all the areas of responsibility charged to the Civil Rights Division, none ranks more highly than protecting the franchise.

Since 2001, the Division has worked steadily to protect federal voting rights. We have directed substantial resources to implementing the electoral reforms of the Help America Vote Act of 2002 ("HAVA"), including working with all states and territories to facilitate their preparedness to comply with the HAVA provisions that took effect on January 1, 2004. We also have taken unprecedented steps to protect the rights of language minority voters. And we have moved strongly to ensure that all American citizens overseas, including our men and women in uniform, have an opportunity to participate in the democratic process. Finally, as your draft report demonstrates, the Division has significantly increased the numbers of monitors and observers deployed to ensure compliance with federal voting rights. In short, this Division has been fully attentive to the challenge of protecting federal voting rights, and we are gratified to see our successful record reflected in your draft report.

With regard to the specific recommendations your draft report has made, we are pleased to accept both. In the Division's view, each will be a salutary addition to the many steps already taken to improve protections of federal voting rights. For that reason, the Assistant Attorney

## Attachment V

General for Civil Rights has already directed implementation of your recommendations.

With regard to the balance of the draft report, we appreciate the opportunity to have worked with GAO personnel on this audit. As with any report on an issue of such a critical nature, it is of the utmost importance that the report be both complete and accurate. Accordingly, we also appreciate the opportunity to provide comments. We must, however, register our disappointment that, while GAO took more than fifteen months to investigate and compile its draft report, you offered the Civil Rights Division only one week to review and comment on the voluminous document. Moreover, when the Division explained the difficulties and potential for error raised by such an abbreviated review, GAO offered just one additional week. This restriction has severely hampered our ability to provide the type of thorough review appropriate to such an important document, a particularly unfortunate consequence given that the draft report fails to capture accurately substantial portions of the Voting Section's work. Nevertheless, we have endeavored to provide as detailed and illuminating a set of comments as possible in the permitted time. Our specific comments follow:

**1. Tracking Election Monitoring Activities**

First, the GAO recommends establishing within the Department's ICM system a mechanism for tracking and reporting election-monitoring activities. As noted, the Assistant Attorney General has already taken steps to implement this recommendation, and the Division will implement an electronic means of tracking such data.

At the same time, however, it is important that the draft report not leave the reader with the suggestion that the Division presently lacks any system for tracking its election monitoring activities. See Letter at v; Draft Report at 41. This would be incorrect. The Voting Section does currently have procedures that effectively track election monitoring activities. Since the mid-1980s, the Voting Section has maintained logs detailing this information. As your records should show, the Division provided your investigators with a full explanation of these procedures in its May 25 response to your inquiries. The Division also provided you with the actual charts used for this tracking for the years 2000-2004. These charts provide detailed information about the state, the name of the jurisdiction monitored, the date of election, and the number of OFM observers and DOJ personnel who monitored the election. The Voting Section has found this system to be adequate and effective. Moreover, the existing logs are accurate and easily accessible.

**2. Incomplete and Outdated Data Regarding Section 203 Work**

It is also important that the final report reflect the most up-to-date information possible about the Voting Section's enforcement activities. Specifically, with regard to the Division's enforcement of Section 203 of the Voting Rights Act, while the draft report purports to have reviewed data through March 15, 2004, it discusses enforcement of Section 203 only through 2002. See Draft Report at 27. We have previously noted to you that the Division undertook a significant number of additional cases related to Section 203 and language minority issues in

## Attachment V

2002, 2003, and 2004. Yet, the draft report fails to mention these. The Division thus respectfully requests that the draft report be corrected to reflect our full record. Specifically, Civil Rights Division attorneys contacted all, and personally visited many of, the 296 counties covered under Section 203 to help guide local election officials in complying with the law's dictates. In 2003, the Division also initiated an additional two lawsuits (one under Section 2 and Section 208 of the Voting Rights Act and one under Section 203 of the Voting Rights Act) not reflected in the draft report, and we filed an additional 5 cases in 2004 (each under Section 203 of the Voting Rights Act). The cases are referenced in Attachment 1 to this letter. To put this in perspective, the Division has filed as many Section 203 cases since May 2004 as were filed in the previous eight years. Moreover, the cases filed since May 2004 have provided comprehensive minority language election programs to more voters than all previous Section 203 cases combined.

In addition to the foregoing filings, a number of additional jurisdictions voluntarily modified their practices after being contacted by the Division. In this respect, it is important to note a substantial restraint on the Division's authority. The remedies provided under the voting rights laws only provide for prospective relief for violations. In other words, even if the Department's investigation reveals that a particular jurisdiction may have violated the law in the past, if the jurisdiction changes its election procedures to comply with the law so it is no longer in violation, our investigation becomes moot and we cannot litigate to ask for remedies that are no longer needed. Unlike private plaintiffs filing litigation in test cases, the Department cannot obtain relief for past violations that are no longer occurring. This is especially important to keep in mind when reviewing matters in states that passed voting reform legislation changing their election administration.

### 3. Updated Information on UOCAVA Work

On page 28 of the draft report, the third bullet point about the lawsuit filed in Georgia under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 should be corrected to reflect that a court order was granted:

"Filed. Obtained a court order in an UOCAVA lawsuit in July against the state of Georgia requesting a for similar emergency relief order for its primary election."

### 4. Updated Information on HAVA Work

On page 29 of the draft report, the summary of the Division's activities under the Help America Vote Act of 2002 fails to mention the first HAVA enforcement action filed by the Voting Section. We respectfully request that the following bullet point be added:

Filed its first enforcement action in California against a county for failing to fully implement HAVA.

## Attachment V

The case is *United States v. Son Besho Cowry, California* (N.D. Cal.). A complaint was filed on May 26, 2004 alleging, in addition to a violation of Section 203, a violation of the voter information provisions of HAVA. A consent decree requiring actions by the county to remedy the violations is pending review and approval by the court.

**5. Documentation of Complaints of Alleged Election 2000 Voting Irregularities**

As the GAO draft report itself notes, "[c]onfidence in our election processes is of utmost importance." Draft Report at vi. Moreover, confidence is assisted by "accurately recording and documenting [election related] activities in as clear a manner as possible." *Id.* This is no less true for your report as for our record-keeping. Accordingly, it is imperative that the final report accurately captures the full facts surrounding the Division's efforts during the 2000 election. At present, the draft report fails to do so.

Your draft letter to Congress and draft report repeatedly references the Division's documenting of public telephone calls during the 2000 Presidential election. These references may be construed to imply that an alternate means of documenting such public contacts would have enabled the Division to identify the existence of violations of federal law warranting further investigation. It is important that the GAO be clear that it is reaching no such conclusion, because such a conclusion simply would not be accurate.

The chief difficulty in the draft report's summary is its nearly exclusive focus on telephone logs maintained by contractors hired by the Department to record calls coming into the Department's main switchboard in the days after the 2000 election. The draft report contends that these logs were insufficiently detailed. However, the draft report fails to note that these logs made up only a small portion of all of the records of phone calls received by the Division. Therefore, any shortcomings in these logs are extremely unlikely to have changed the course of subsequent investigations.

As we previously advised GAO, (DOJ Response to April 7 Information Request), these contractors were hired to take phone calls from the public only during the weekend following the election, when the Division's offices would normally otherwise have been closed. The Division decided to afford the public this extra service after the Department's main switchboard received thousands of calls from around the country inquiring into the situation in Florida. In addition, the Voting Section's telephone lines received an elevated number of calls.

In focusing almost exclusively on the contractor logs, the draft report overlooks the call logs maintained by the Voting Section itself in 2000. These provided extensive documentation about callers and a description of the callers' complaints, and have proved reliable and accurate. Moreover, the vast majority of calls received were tracked through these logs. Therefore, the Division respectfully notes that during the 2000 election it did have an effective means of tracking election-related phone calls.

## Attachment V

In our April 2004 response, we provided you substantial detail regarding this additional means for tracking public election-related inquiries. Specifically, the Division's 800 number system was modified to permit as many callers as possible to express their views. It was temporarily reconfigured to provide four caller options to: (1) allow persons to express general opinions about the election (which represented the overwhelming majority of the calls); (2) provide specific information about voting-related incidents outside Florida; (3) provide specific information about voting-related incidents inside Florida; or (4) provide specific information about non-2000 election-related matters.

This modified system took effect late in the day on Thursday, November 9, 2000, and was discontinued following resolution of the Presidential election. The calls coming into the temporary 800 system were reviewed regularly by Voting Section personnel beginning on November 13, 2000. Return calls were made when there was some indication that the caller had substantive information about a specific voting rights violation.<sup>1</sup> Separate log forms tracked each of the 800 number options. Calls expressing general views without conveying specific information about voting rights violations were recorded on forms similar to the contractor logs, with category columns listed for each state (although these forms were changed periodically to reflect the changing Florida election situation). Calls made under the other options were recorded on log forms providing for much more specific information, including name, phone number, and a detailed description of the complaint. We recently provided GAO with these logs. In addition, we invited GOA staff to meet with Voting Section staff involved in dealing with the public during the 2000 election. Regrettably, GAO declined this invitation.

#### 6. Nature of the Calls Received After the 2000 Election

In addition to focusing on only a subsection of the calls received, the draft report also fails to properly note the substance of the vast majority of phone calls received by the Department following the November 2000 election.

First, the draft report fails to note the fact that of the thousands of calls received by the Department's switchboard during this period, upwards of 95 percent did not provide specific complaints of possible violations of federal voting rights laws, but rather simply reflected citizen frustration or anger over the ongoing election dispute. This assessment was made by the Voting Section's experienced, career professional staff, including both trial attorneys and management. Moreover, determinations were made by staff only after receiving initial reports from the Department's switchboard operators, engaging in hundreds of conversations with citizens calling into the Voting Section's phone lines, and reviewing the contractor logs that were faxed to the Voting Section on an hourly basis.

<sup>1</sup> In our suggested changes to the section entitled "November 2000 Election Telephone Logs" of your draft Statement of Facts, which we sent to you on August 4, 2004, we explained the specifics of this additional call tracking system. Unfortunately, these changes were not incorporated in GAO's draft report.

## Attachment V

Second, the draft report fails to note that the vast majority of the calls received by the contractor lines came from New York and California; the number of calls from Florida was relatively small. The vast majority of these expressed frustration over the situation in Florida, and were based on second-hand information and media stories.

The same was also true for the majority of calls originating from Florida. Voting Section personnel followed up with callers from Florida to determine whether they had substantive information about the Florida election. Again, however, the vast majority of these callers were calling to express frustration at the ongoing election dispute and had no specific information about federal law violations. In addition to following up with these callers, Voting Section personnel also pursued other avenues of complaints (e.g., calls made by voters directly to the Voting Section, complaint logs generated by the NAACP Voter Fund, hearings conducted by the U.S. Commission on Civil Rights and the NAACP, incidents receiving a large amount of publicity, etc.) to determine if federal laws had been violated.

As noted at the outset, it is imperative that the draft report accurately reflect these facts. At the same time, the Division fully concurs in the GAO's recommendation that an expanded recording system be implemented. For the 2004 election, the Division will continue to refine its tools for recording election-related calls to allow the public access to the Voting Section's complaint process.

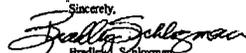
#### 7. Criminal Investigations

As you are aware, the GAO audit also examined the work done by the Criminal Division's Public Integrity Section, which is responsible, along with United States Attorneys' Offices, for investigating and prosecuting federal election crimes. The Chief of the Public Integrity Section, Noel Hillman, has asked us to include his comments to the portion of the draft report that pertains to the work of the Criminal Division. The first paragraph on page 22 of the draft report provides incorrect information about the training received by Assistant U.S. Attorneys. There are annual public corruption training conferences held by the Justice Department for Assistant United States Attorneys (AUSAs), and these include presentations on federal election crimes. These conferences are available to all AUSAs, including the AUSAs who are the designated district election officers. Some, but not all, of the 93 AUSAs who are their district's designated election officers may attend these conferences. In addition to these public corruption conferences, the district election officers are now attending the annual Ballot Access and Voting Integrity Conference, the first of which was held in 2002, to receive training on both civil rights issues important to ballot access as well as voting integrity issues important to election crime matters. Please note that the name of this annual conference is the "Ballot Access and Voting Integrity Conference," not the "Voting Integrity Conference."

In conclusion, we appreciate the opportunity to work with your staff concerning the important work of the Voting Section in enforcing federal voting rights. We are hopeful that the

Attachment V

misstatements and inaccurate characterizations in this draft report will be corrected prior to its release.

Sincerely,  
  
Bradley J. Schlozman  
Deputy Assistant Attorney General

(440350)





**Jon M. Greenbaum**

Jon M. Greenbaum is the Director of the Voting Rights Project for the Lawyers' Committee for Civil Rights Under Law where he is responsible for directing the Committee's voting rights litigation which challenges all forms of voting rights discrimination practiced against minority and ethnic groups in the United States. This work includes challenges to electoral practices that violate the Voting Rights Act, including those which have the result of denying minorities an equal opportunity to participate in the political process and elect candidates of their choice and voting changes in jurisdictions covered by Section 5 of the Voting Rights Act which worsen the position of minority voters, and challenges to electoral practices that violate the Fourteenth Amendment, including those which improperly infringe on the fundamental right to vote, practices that intentionally discriminate against minority voters, and claims brought pursuant to *Bush v. Gore*. The Voting Rights Project acts as co-counsel with participating law firms to bring such actions.

Mr. Greenbaum is also responsible for directing the Voting Rights Project's non-litigative activities, which include participating in efforts to maintain and expand the voting rights of minority citizens through legislation, participating in outreach efforts to minority citizens involving voting rights, producing position papers and articles on current issues of concern, coordinating with other organizations on issues affecting voting, and speaking at conferences and to the media regarding voting rights issues.

Immediately prior to joining the Lawyers' Committee, Mr. Greenbaum was a trial attorney in the Voting Section of the United States Department of Justice for seven years where he enforced voting rights laws for the United States, including Section 2 of the Voting Rights Act, preclearance provisions under Section 5 of the Voting Rights Act, and the bilingual requirements under Section 203 of the Voting Rights Act. In *United States v. Charleston County, South Carolina*, a case which challenged the at-large method of electing the Charleston County Council on grounds that it diluted the voting strength of African-American citizens, Mr. Greenbaum drafted and argued a successful plaintiff's motion for partial summary judgment on all three preconditions of *Thornburg v. Gingles*, which is extremely rare, and was a member of the legal team that successfully tried the remainder of the action before the district court.

Prior to working at the Department of Justice, Mr. Greenbaum was a litigation associate in the Los Angeles office of the international law firm, Dewey Ballantine. Mr. Greenbaum worked on numerous litigation matters in the areas of environmental law, employment law, and business litigation.

Mr. Greenbaum graduated in 1989 from the University of California at Berkeley with Bachelor of Arts degrees in Legal Studies (with honors) and History. He received his law degree from the University of California at Los Angeles in 1993.

Mr. Greenbaum is of racially mixed heritage, with a mother of Japanese descent and a father who is white.

012306

**Patrick J. Rogers**

- Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico;
- 1991-2003 General Counsel to the New Mexico Republican Party;
- Election cases:
  - *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures;
  - *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge;
  - *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues;
  - *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues;
  - *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues;
  - *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

**BLANK**  **ROME**  
**GOVERNMENT RELATIONS LLC**

DAVID A. NORCROSS

Biographies

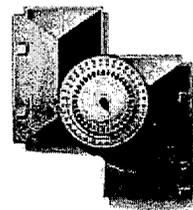
Practice Areas

Offices



Senior Principal  
 202.772.5874  
 norcross@BlankRome.com

Mr. Norcross is a member of the Board of Directors of Blank Rome Government Relations LLC, and served as Chairman of the Republican National Convention's Committee on Arrangements for the 2004 Republican National Convention, in New York City. His practice focuses on legislative affairs, legislative and executive department liaison, lobbying, advocacy programs and public affairs.



Federal Government

He formerly served as a member of the board of the International Republican Institute Counsel for the 1988 Republican National Convention; a member of the New Jersey Republican State Committee; General Counsel to the Republican National Committee; General Counsel to the International Republican Institute; board member for The Center for Democracy; vice chairman for the bipartisan Commission on Presidential Debates; and secretary for the Burlington County (NJ) Board of Elections.

Copyright ©2006 Blank Rome  
 Government Relations LLC

012308

Voting Fraud/Voter Intimidation Project Working Group Contact Information\  
As of February 22, 2006

**The Honorable Todd Rokita**

Secretary of State  
State House, Room 201  
200 West Washington Street  
Indianapolis, IN 46204  
Phone: 317-232-6531  
Fax 317-233-3283  
Email:

**Kathy Rogers**

Director of Elections  
Office of the Secretary of State  
West Tower Suite 1104  
2 Martin Luther King, Jr. Drive, SE  
Atlanta, GA 30334-1505  
Phone: 404-656-2871  
Fax: 404/651--9531  
Email:

**David A. Norcross**

Blank Rome, LLP  
Sustaining Member  
Watergate, Twelfth Floor  
600 New Hampshire Avenue, N.W.  
Washington, DC 20037  
Phone: 202 785-4100  
Fax: 202 785-5588  
Email: [norcross@blankrome.com](mailto:norcross@blankrome.com)

**VOTING RIGHTS ACT: SECTIONS 6 AND 8—THE  
FEDERAL EXAMINER AND OBSERVER PROGRAM**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS  
FIRST SESSION

NOVEMBER 15, 2005

**Serial No. 109-77**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

24-606 PDF

WASHINGTON : 2006

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

012310

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, Jr., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, Jr., Michigan
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
DANIEL E. LUNGREN, California	ZOE LOFGREN, California
WILLIAM L. JENKINS, Tennessee	SHEILA JACKSON LEE, Texas
CHRIS CANNON, Utah	MAXINE WATERS, California
SPENCER BACHUS, Alabama	MARTIN T. MEEHAN, Massachusetts
BOB INGLIS, South Carolina	WILLIAM D. DELAHUNT, Massachusetts
JOHN N. HOSTETTLER, Indiana	ROBERT WEXLER, Florida
MARK GREEN, Wisconsin	ANTHONY D. WEINER, New York
RIC KELLER, Florida	ADAM B. SCHIFF, California
DARRELL ISSA, California	LINDA T. SANCHEZ, California
JEFF FLAKE, Arizona	CHRIS VAN HOLLEN, Maryland
MIKE PENCE, Indiana	DEBBIE WASSERMAN SCHULTZ, Florida
J. RANDY FORBES, Virginia	
STEVE KING, Iowa	
TOM FEENEY, Florida	
TRENT FRANKS, Arizona	
LOUIE GOHMERT, Texas	

PHILIP G. KIKO, *General Counsel-Chief of Staff*  
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON THE CONSTITUTION

STEVE CHABOT, Ohio, *Chairman*

TRENT FRANKS, Arizona	JERROLD NADLER, New York
WILLIAM L. JENKINS, Tennessee	JOHN CONYERS, Jr., Michigan
SPENCER BACHUS, Alabama	ROBERT C. SCOTT, Virginia
JOHN N. HOSTETTLER, Indiana	MELVIN L. WATT, North Carolina
MARK GREEN, Wisconsin	CHRIS VAN HOLLEN, Maryland
STEVE KING, Iowa	
TOM FEENEY, Florida	

PAUL B. TAYLOR, *Chief Counsel*  
E. STEWART JEFFRIES, *Counsel*  
HILARY FUNK, *Counsel*  
KIMBERLY BETZ, *Full Committee Counsel*  
DAVID LACHMANN, *Minority Professional Staff Member*

# CONTENTS

NOVEMBER 15, 2005

## OPENING STATEMENT

	Page
The Honorable Steve Chabot, a Representative in Congress from the State of Ohio, and Chairman, Subcommittee on the Constitution .....	1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Ranking Member, Committee on the Judiciary, and Member, Subcommittee on the Constitution .....	2
The Honorable Robert C. Scott, a Representative in Congress from the State of Virginia, and Member, Subcommittee on the Constitution .....	4
The Honorable Melvin L. Watt, a Representative in Congress from the State of North Carolina, and Member, Subcommittee on the Constitution .....	5
The Honorable David Scott, a Representative in Congress from the State of Georgia .....	7

## WITNESSES

Ms. Nancy Randa, Deputy Associate Director for Human Resources Products and Services, U.S. Office of Personnel Management	
Oral Testimony .....	9
Prepared Statement .....	10
Ms. Penny L. Pew, Elections Director, Apache County, Arizona	
Oral Testimony .....	12
Prepared Statement .....	13
Mr. Barry H. Weinberg, former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice	
Oral Testimony .....	17
Prepared Statement .....	20

## APPENDIX

### MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable John Conyers, Jr. a Representative in Congress from the State of Michigan and Member, Subcommittee on the Constitution .....	63
Appendix to the Statement of Penny Pew: Election Materials .....	65
Appendix to the Statement of Penny Pew: Prepared Statement of Penny Pew submitted to the National Commission on the Voting Rights Act .....	145
Appendix to the Statement of Barry Weinberg: <i>Problems in America's Polling Places: How They Can Be Stopped</i> ; Temple Political and Civil Rights Law Review, Spring 2002 .....	146
Prepared Statement of the Honorable Bradley J. Schlozman, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, Concerning The Voting Rights Act: Sections 6 and 8, Federal Examiner and Observer Programs .....	194
Inserted into the Record by Congressman Watt during the hearing: Letter from William Jenkins, Director, Homeland Security and Justice Issues, Government Accountability Office, to the Honorables Joseph Lieberman, Henry Wazman, and John Conyers, Jr. regarding the Department of Justice's activities to address past election-related voting irregularities .....	197

**VOTING RIGHTS ACT: SECTIONS 6 AND 8—  
THE FEDERAL EXAMINER AND OBSERVER  
PROGRAM**

---

**TUESDAY, NOVEMBER 15, 2005**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 12:38 p.m., in Room 2141, Rayburn House Office Building, the Honorable Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. Every Chairman should have a gavel when it was missing. So now we have it, we can get started.

This is the Subcommittee on the Constitution. I'm Steve Chabot, the Chairman.

I want to thank you all for attending this afternoon. This is the Subcommittee, as I said, on the Constitution, and the ninth in a series of hearings this Committee has held in the last several weeks examining the impact and effectiveness of the Voting Rights Act.

I'd like to thank all my colleagues again for their assistance in making each of these hearings informative and thought provoking, as we continue our efforts to look closely at those provisions of the Voting Rights Act which are set to expire in 2007.

Today, we will focus our attention on sections 6, 7, and 8 of the Voting Rights Act, each of which is set, as I said, to expire in 2 years, in 2007, unless Congress acts otherwise and reauthorizes.

Section 6 authorizes the Attorney General to send Federal examiners to cover jurisdictions to register new voters.

Section 7 outlines the procedures to be followed by these examiners when registering new voters.

And section 8 authorizes the Attorney General to send Federal observers into these covered jurisdictions to ensure that the rights afforded by Federal law are protected.

We have another distinguished panel of witnesses with us here this afternoon, and we want to thank them all for being here, and we look very much forward to their testimony.

The assistance provided by Federal examiners and observers in the election process has played an instrumental role in increasing minority voter participation.

After almost a century of racial discrimination in voting and several unsuccessful attempts to curtail these pervasive practices, Congress enacted the Voting Rights Act back in 1965.

Among the many different tools provided by Congress is the intervention of Federal examiners and observers. This Federal oversight was deemed necessary as result of the failure on the part of covered jurisdictions to openly accept minority voters in the political process.

In the initial years after enactment of the Voting Rights Act, Federal examiners and observers were used in record numbers. The impact these provisions have had on minority voters is reflected in the increasing number of minority voters registering to vote.

Over 112,000 minority voters have been registered by Federal examiners over the life of the Voting Rights Act.

And while the number of examiners sent to jurisdictions has decreased in recent years, the importance of Federal oversight in protecting minority voters has not diminished.

In the last 25 years, Federal observers have been sent to over 98 covered counties to ensure that minority voters are protected.

In fact, the Department of Justice just last week sent Federal observers to 16 jurisdictions in 7 States to monitor elections, to ensure compliance with the Voting Rights Act and other Federal voting and election statutes.

Today, we will examine the impact that Federal examiners and observers have had on increasing minority participation in the political process and the continued need for these provisions in the future.

Again, we look forward to hearing from all our witnesses here this afternoon.

And at this time, I will recognize the distinguished Ranking Member of the full Committee, Mr. Conyers of Michigan, if he would like to make an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman.

Before I begin, could I ask the Chair a question about the absence or withdrawal of the Department of Justice witness that was scheduled to have been here?

Mr. CHABOT. Yes. If the gentleman will yield?

Mr. CONYERS. And I'll yield.

Mr. CHABOT. We've been informed, and, in fact, I would note that the Department of Justice was scheduled to be our fourth witness today, but due to a scheduling conflict, they couldn't be here. They have submitted written testimony, and it's been made available to us, and they've offered to make themselves available at a later date, and to respond to any written questions that this Committee might have.

Mr. CONYERS. Thank you very much for making that clear because their presence is very critical in how many of us will proceed under these—this very important consideration.

Mr. CHABOT. Would the gentleman yield one more time, please?

Mr. CONYERS. Of course.

Mr. CHABOT. I thank the gentleman for yielding. I might note that Mr. Weinberg is a former attorney with the Justice Department, and may be able to answer some of the questions that would be answered if the Justice Department were here.

But again, they—we will be able to provide those questions to them in writing and maybe an appearance down the road as well.

Thank you.

Mr. CONYERS. Oh, you're more than welcome.

This is a very important part of extending the Voting Rights Act of 1965, and I'm very interested from hearing—in hearing from the witnesses about the relationships between the examiners and the observers.

We're—it seems to me, frankly, Mr. Chairman and Members of the Committee, that we may need to resort to a little rewriting of this section to clear up some parts of it.

The one thing I would love to hear commented on and maybe we'll do it in the questions is that we have a sent Members in for—we have sent either observers—people have been certified to come in to monitor elections, but it's usually about language barriers. It's not about racial exclusion or harassment or coercion or discouraging the vote.

For example, in the city—my city of Hamtramck, Michigan, in which there were some problems with Arab-Americans being harassed at the polls, and they—we sent in Federal observers, but in many parts of the country, where we really need somebody looking at some very fundamental questions, which leave it unnecessary for me to even discuss why we have to justify this extending and improving on these provisions 3 and 6 and 8. Every election cycle in our offices, we field numerous complaints involving election day mischief and worse from around the country—plenty of it.

As a matter of fact, we should write a report about it or Mr. Weinberg or Ms. Pew should write a book about it. Baltimore, 2002—intentions to confuse and suppress the voter turnout, where flyers misstated the date of the election and implied that overdue parking tickets, moving violations, behind in your rent were qualifications that could preclude you being allowed to vote.

Kentucky gubernatorial election, 2003—59 precincts with significant African-American populations targeted for vote challenges by local campaign officials.

May I have an additional minute, sir?

Mr. CHABOT. Without objection, so ordered.

Mr. CONYERS. Thank you.

In North Carolina, in 1990, the Department sued over postcards mailed to African-American voters designed to discourage them from coming to polls by providing misinformation about the voter requirements.

They finally—there was a consent decree.

Now, the failure—one of the problems that were corrected from 1957 to 1965 is that we were giving retrospective relief for interference with the right to vote.

What we needed was prospective relief, and that's what's up for renewal now, and I hope we can gather a hardcore congressional group of Members that realize that that's the heart of this—one of the hearts of the hearing that we're holding here today.

We've had an election day last week. The Department sent Federal observers and personnel into 16 jurisdictions in 7 States.

In 2004, the Department coordinated and sent 1,463 Federal observers and 533 Department personnel to monitor 163 elections in 105 jurisdictions and 29 States.

So we're here about something that is really fundamental to improving the voter process in America.

I cannot get it out of my head that we have had two presidential elections in a row where one State in each election determined the outcome of the election, and each time more election violations and accusations of violations occurred in they State that provided the winner of the election with the presidency.

And so I ask unanimous consent to revise and extend my remarks and to include it in the record.

Mr. CHABOT. The gentleman's time has expired, and so ordered.

I would just note—the Chairman would just take a very brief not necessarily rebuttal, but I would just note that in the most recent election, the State that the gentleman was referring to happens to be my State, the State of Ohio, and there were many accusations of problems at polling places and things, and study after study that's been done really indicated that it was a fair election and that the vote was accurate; and I believe it was 118,000 was the margin in Ohio. So it wasn't like Florida, where there were 500 or something that made the difference.

So, for the record, Mr. Conyers.

Mr. CONYERS. Well, for the record—

Mr. CHABOT. Yeah.

Mr. CONYERS. —there is a book out called "What Went Wrong in Ohio," based on a report by the minority staff of the Judiciary Committee that has not been rebutted to my knowledge.

Mr. CHABOT. Yeah. I would just note that I believe that's the minority's opinion on that particular book and isn't—so I'd. But we could get on and on about that. But I—the one thing we do agree on is that the Voting Rights Act is very important and has been significant in protecting the rights to vote for many people in this country, and we're looking seriously at reauthorizing this, and so I think we agree on most of what the gentleman said in his opening statement.

And so I thank the gentleman for that.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman from Virginia, Mr. Scott, is recognized for five minutes.

Mr. SCOTT OF VIRGINIA. Thank you, Mr. Chairman.

Mr. Chairman, sections 6 through 8 of the Voting Rights Act contain the Federal Examiner and Observer provisions of the act, which allow Federal employees to observe polling place and voter counting activities and serve to document and deter inappropriate conduct.

Although these provisions are permanent, the primary way these provisions are utilized is through the section five preclearance coverage formula, which is set to expire in August 2007.

Federal observers have been deployed in every year, just about every year. From 1966 through December 8, 2003, almost 25,000 observers have been deployed in approximately a thousand elections.

While observer coverage in the early years was almost exclusively designed to protect the rights of Black voters in the Deep South, in recent years it has been approximately a 50-50 split between traditional election coverage and election coverage designed

to protect the rights of minority language voters in various areas of the country.

In addition, the Department has routinely deployed its own civil rights personnel to serve as civil rights monitors in jurisdictions not covered by the Voting Rights Act.

During the 2004 election, the Department of Justice sent approximately 840 Federal observers and more than 250 Civil Rights Division personnel to 86 jurisdictions in 25 States to monitor general election activities to ensure voters were free from harassment, intimidation, and other illegal activity.

Over the last 40 years, the nature of the Federal examiner has changed. The examiner now usually plays a more administrative role; whereas, the observer's role has become more central to protecting voting rights.

Observers monitor elections in any certified jurisdiction for the purpose of observing whether eligible voters are allowed to vote, and whether votes cast by eligible voters are properly being counted.

Observers essentially serve as witnesses for what occurs in the polling place and during the counting of the vote.

In the case *U.S. v. Berks County*, that case shows the value of observers in documenting problems within the polls. The United States won the case, based upon the court-appointed observers' substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by polling officials.

The *Berks* case also illustrates why observers have a deterrent effect, because poll workers, election officials, and others involved in the election process know that their actions are being observed and recorded, some individuals are going to be discouraged from engaging in inappropriate behavior.

Sections 6 and 8 and other expiring provisions are essential to ensuring the fairness of our political process and equal opportunity for minorities in American politics.

It's imperative that we work together to strengthen these provisions, and I look forward to the testimony of our witnesses.

I yield back.

Mr. CHABOT. I thank the gentleman for yielding back.

The gentleman from North Carolina, Mr. Watt, is recognized for the purpose of making an opening statement.

Mr. WATT. Thank you, Mr. Chairman, and thank the Chairman again and the Chairman of the full Committee for this series of hearings.

I think this is the ninth one we've had on the reauthorization.

Mr. CHABOT. That's correct.

Mr. WATT. And I think we're getting close to building the record that we need related to the expiring provisions and the necessity for their extension.

Today's hearing turns to the last set of provisions scheduled to expire in 2007. Although much of the media coverage and public interest in the Voting Rights Act has been focused largely on section 5 and section 203, the Federal Examiner and Observer Program has historically played an integral role in ensuring that voting rights are actually shielded from Election Day abuses and the violation of those rights are properly documented.

While there is some question about the necessity of the Federal examiner provisions going forward, the role and continued need of well-trained Federal observers assigned to monitor elections in certified jurisdictions is absolutely critical.

The value to the average citizen of a Federal presence at the polls in those jurisdictions with a pattern of voting irregularities and infractions is simply incalculable.

Voters feel more at ease and confident when the Government places a high priority on election monitoring.

Conversely, those who might otherwise commit fraud or harass or intimidate eligible voters are deterred from doing so.

Despite significant gains in preventing blatant acts of discrimination at the polls, intentional efforts to undermine racial and language minority voters persist.

Last week the Voting Rights Initiative of the University of Michigan Law School issued its final report entitled "Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982." And I'm going to ask unanimous consent that we enter this report in the record, Mr. Chairman.

Mr. CHABOT. Without objection, so ordered.

Mr. WATT. Combing through the over 700 court cases, the researchers document repeated and sometimes egregious evidence of intentional discrimination against Native Americans, elderly African-Americans, and others on election day.

Just last year, at the request of Ranking Member Conyers, Congressman Waxman and Senator Lieberman, the GAO reviewed the Department of Justice's activities to address—acknowledged election-related voting irregularities, including conduct prohibited by the Voting Rights Act in Florida and other jurisdictions during Election 2000, and I would ask unanimous consent that that report be entered into the record also.

Mr. CHABOT. Without objection, also so ordered.

Mr. WATT. Although a DOJ witness could not be here today, or at least not a current employee of the DOJ, I would encourage the continued deployment of DOJ attorneys and other professionals on a judicious and non-political basis to supplement, but not to replace the work of statutorily authorized observers.

Federal observers have statutory rights to access not shared by Department of Justice attorneys.

It is important that this access to the polling place be preserved to guarantee every voter's ability to cast their vote and to have their votes counted free of unlawful discrimination.

Finally, Mr. Chairman, one final thing I want to deal with—that's—really we haven't had a hearing on yet, but there's been some testimony about over the course of our hearings, and that's we need to make sure that the award of expert fees to prevailing parties in litigation is put into the reauthorization.

The fees of experts in these cases are just—have become a real burden for everybody. I understand that prior to the 1982 reauthorization, there was an agreement to put this provision in, and because of the crunch at the last minute, the provision actually just never got put into the law.

And I don't think there's really any controversy about it. Prior testimony has already established the incredible expense imposed

on *bona fide* victims of voting rights violations to assemble the necessary evidence to sustain their burden of proof in a private action.

By allowing expert fees to prevail in parties, we would bring the Voting Rights Act into conformity with other Civil Rights legislation and promote the continued partnership between individual and Government enforcement that has made the act the success it is today.

I thank you, Mr. Chairman, and yield back and look forward to the witnesses; welcome them and thank them for being here.

Mr. CHABOT. I thank the gentleman. The gentleman's time has expired.

The Chair would also note the presence of a distinguished Member of the House, Congressman David Scott of Georgia, whose attendance has been exemplary at these hearings. Not actually a Member of this Committee, but I'd ask unanimous consent that he be recognized and have all the rights of a Committee Member today and be allowed to make an opening statement should he chose to do so, and also be allowed to question witnesses.

The gentleman is recognized, if he'd like to make an opening statement.

Mr. SCOTT OF GEORGIA. Well, thank you, Mr. Chairman.

I would just like to associate my remarks with my distinguished Democratic colleagues who've spoken eloquently on the statements so far in the interest of time.

But there is—and my Republican colleague, the Chairman, quite naturally. Thank you, Mr. Chairman. I also recognize you first.

If it were not for your graciousness, I wouldn't be here with this excellent opportunity.

Mr. CHABOT. Thank you. I was listening. Thank you.

Mr. SCOTT OF GEORGIA. Well, I may add, I had already gone over and shaken [sic.] his hand and thanked him personally.

Mr. WATT. I just didn't want him to engage in that oversight, Mr. Chairman.

Mr. CHABOT. When all this goodwill is over. Yeah.

Mr. SCOTT OF GEORGIA. And only one point that I certainly want to—a point that I think we would—I'm interested in is the why Federal observers are—you think they are—Mr. Weinberg, especially I was reading over your testimony earlier today—and your point about why Federal observers are necessary, but Federal examiners are not, certainly begs for some good discussion. So I look forward to that.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. The gentleman's time has expired.

I'd like to—before I introduce the panel—note that without objection all Members will have 5 legislative days to submit additional materials for the hearing record.

And I'd now like to introduce our very distinguished panel of witnesses here this afternoon. Our first witness will be Ms. Nancy Randa, Deputy Associate Director for Talent Services, Human Resources, Products, and Services Division, at the U.S. Department of Personnel Management.

As Deputy Associate Director, Ms. Randa oversees the services and support provided to Federal agencies in staffing and human re-

sources, organizational and individual assessment, training and management assistance, and technology services.

Included in her responsibilities is overseeing OPM's Voting Rights Program, which deploys observers to designated polling sites to monitor elections.

Prior to serving as Deputy Associate Director, Ms. Randa served as Acting Associate Director for Merit Systems Oversight and Effectiveness, where she spearheaded a variety of projects that support human capital management and accountability.

Ms. Randa is an active supporter of human resources workforce transformation efforts, working on HR curriculum efforts at the graduate school operated out of the U.S. Department of Agriculture, and with the Human Resources Management Council.

We welcome you here this afternoon, Ms. Randa.

Our second witness will be Ms. Penny Pew.

Ms. Pew has served as Apache County Elections Director since 2001. She has been a certified Elections Officer with the Arizona Secretary of State's Office since 2001, as well as Arizona's League of Cities and Towns.

In 2003, Ms. Pew successfully completed the Southwest Leadership Program for Local and State Government from the University of Arizona Institute for Public Policy and Management.

In 2004, Ms. Pew partnered with the Navajo Nation Office of the Speaker on the successful Get Out the Vote 2004 Campaign. She most recently served as a panelist for the National Commission on the Voting Rights Act. We welcome you here this afternoon, Ms. Pew.

And our third and final witness will be Mr. Barry Weinberg.

Mr. Weinberg is a former Deputy Chief and Acting Chief of the Voting Section at the U.S. Department of Justice.

From 1965 until 2000, Mr. Weinberg served in many key roles at the Department, including supervising investigations and litigation under the Voting Rights Act.

In December 1999, the Barry H. Weinberg Award was established by the Department of Justice, recognizing an individual who has made an outstanding contribution to the effectiveness of the Federal Observer Program for monitoring polling place procedures under the Voting Rights Act.

Mr. Weinberg is the author of numerous articles on the Voting Rights Act, including a 2002 law review article, co-authored with Lynne Utrecht, titled "Problems in America's Polling Places: How They Can be Stopped."

Welcome, Mr. Weinberg, as well, as all the panelists. And I would—as I had noted before, the—for the record, the Department of Justice was scheduled to be our fourth witness here today, but due to a scheduling conflict, they were unable to be here.

The Department of Justice has submitted written testimony, which has been made available to us, and has offered to make themselves available at a later date and to respond to any written questions that this Committee might have, and those could be submitted to the Department of Justice.

A couple of other items I just need to mention is some of you have testified before; some of you may not be aware of this. We have what's called a 5 minute rule. There are two sets of lights

there. They'll go for 5 minutes. For 4 minutes, they'll be green. When there's 1 minute left, it'll turn yellow, and red light will come on when your 5 minutes is up.

I won't gavel you down immediately at that time, but we'd ask within reason to try to stay within that 5 minutes as much as possible.

It's also the practice of the Committee to swear in all witnesses appearing before it, so if you wouldn't mind, if you could each stand and raise your right hand.

[Witnesses sworn.]

Mr. CHABOT. Each witness has indicated in the affirmative. Thank you.

And we'll now hear from our first witness. Ms. Randa, you're recognized for 5 minutes.

**TESTIMONY OF NANCY RANDA, DEPUTY ASSOCIATE DIRECTOR FOR HUMAN RESOURCES PRODUCTS AND SERVICES, U.S. OFFICE OF PERSONNEL MANAGEMENT**

Ms. RANDA. Thank you, Mr. Chairman and Members of the Subcommittee. I am pleased to be here this afternoon to discuss the Office of Personnel Management's role in carrying out sections of the Voting Rights Act of 1965.

OPM works closely with the Department of Justice, specifically the Voting Section of the Civil Rights Division to assign voting rights observers to locations designated by the Department.

OPM's ultimate success with this program depends on its ability to recruit, train, deploy, and supervise observers of Election Day procedures.

Under the Voting Rights Act, at the request of a U.S. District Court or the U.S. Attorney General, OPM provides for appointment of 1: examiners, to examine and register qualified individuals denied the right to register in covered jurisdictions; 2: hearing officers, to entertain challenges to the actions of examiners; 3: support staff; and 4: observers to monitor actual polling places on Election Day and the subsequent tabulation of the votes.

Since 1966, we have deployed over 26,000 observers in a total of 22 States. Prior to 1976, we sent observers to only five States—Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

However, in the past 10 years, as more jurisdictions have been subject to coverage under the Minority Language provisions of the act, we sent the next largest number of observers after Mississippi to these States: Arizona, New Mexico, New Jersey, California, Michigan, Pennsylvania, and New York.

Voting Rights observers serve as neutral monitors, witnesses, who do not intervene if there are violations. They only watch, listen, and record events that occur at particular polling sites on election days.

At present, we have a pool of approximately 900 intermittent employees, called into service on an as needed basis, who come from all walks of life, including Federal employees and retirees, students, and other public and private sector workers.

We schedule 1-day classroom sessions for observers to provide in-depth training on the overall process, on specific observer responsibilities, and on administrative issues.

We also provide refresher training during pre-briefing sessions on the day before the election. Whenever possible, we do role playing in the training to demonstrate to the observers the proper way of handling themselves at the polling sites.

In brief, the deployment process works this way: Prior to an election, the Department of Justice notifies OPM as to when and where it will need observers.

OPM then assigns a Voting Rights Coordinator to work with Justice's lead attorney to allocate observers to polling sites, coordinate logistics, and assign a captain to oversee the execution of the deployment.

The day before an election, a Department attorney briefs the observers, specifying issues of concern and activities to be reported. Throughout the day, observers report such information to the captain, who passes this information to a Department attorney. Only the Department of Justice determines if intervention is necessary, and only the Department of Justice takes action.

Toward the end of election day, the attorney determines when to call back the observers. The observers then return to their staging site and prepare a written report, one for each polling site, to document what they saw and heard throughout the day.

This is the bulk of what OPM does. But the statute also calls on OPM to have an examiner for each jurisdiction where observers will be assigned.

Originally, these examiners prepared a Federally-maintained list of voters who were denied the right to register in covered jurisdictions and they received calls from citizens regarding election day issues or incidents.

This function, however, has changed over the years. No voters have been added to the Federally-maintained list since 1983, as registration barriers have largely been eliminated.

Moreover, since there have been no challenges to registration decisions in the past 30 years, there has been no need for hearing officers.

Also due to advances in technology, toll-free numbers now allow citizens to report incidents and information to these examiners remotely in real time and 24 hours a day during the election period.

Under the act, OPM is required to publish voter registration qualifications of each covered State in the Federal Register, as well as to publish the list of examiners, places for voter registration, and examiner assignments.

However, these publications requirements may no longer be necessary since they are now covered nationwide by provisions of the Help America Vote Act and the National Voter Registration Act, which set out Federal standards for voter registration.

That concludes my testimony, and I would be pleased to respond to any questions the Subcommittee may have.

[The prepared statement of Ms. Randa follows:]

PREPARED STATEMENT OF NANCY RANDA

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this afternoon to discuss the Office of Personnel Management's (OPM) role in carrying out sections 3, 6, 7, 8, 9, and 12 of the Voting Rights Act of 1965 (the Act).

Currently, implementation of the Voting Rights Act at OPM is managed by the Division for Human Resources Products and Services in the Center for Talent Services. This office works closely with the Department of Justice (the Department), specifically the Voting Section of the Civil Rights Division, to assign Voting Rights observers to locations designated by the Department. OPM's ultimate success with this program depends on its ability to recruit, train, deploy, and supervise observers of election-day procedures.

With regard to responsibilities assigned to OPM (prior to 1979, the U.S. Civil Service Commission), the Voting Rights Act provides, at the request of a U.S. District Court or the Attorney General of the United States, for the appointment of examiners to interview, ascertain qualifications, and register, if appropriate, qualified individuals denied the right to register by State and local officials in covered jurisdictions; hearing officers to entertain appeals and challenges to the actions of examiners; support staff as necessary to allow these individuals to perform their responsibilities; and observers to monitor actual polling places on election day and the subsequent tabulation of the votes. These provisions have not materially changed since initial passage of the Act in 1965. The Voting Rights Act also requires OPM to promulgate regulations on procedures for challenging the actions of examiners and to publish in the Federal Register individual State registration qualifications.

Since 1966, we have deployed over 26,000 observers in a total of 22 States. Prior to 1976, we sent observers to only 5 States: Alabama, Georgia, Louisiana, Mississippi, and South Carolina. In the past 10 years, as more jurisdictions have been subject to coverage under the minority language provisions of the Act, we sent the next largest number of observers, after Mississippi, to these States (in this order): Arizona, New Mexico, New Jersey, California, Michigan, Pennsylvania, and New York.

Voting Rights observers serve as neutral monitors, who do not intervene if there are violations. They only watch, listen, and record events that occur at particular polling sites on election days. At present, we have a pool of approximately 900 intermittent employees—called into service on an as-needed basis—who come from all walks of life, including Federal retirees, students, other public- and private-sector workers, and some full-time employees of various Federal agencies.

We schedule one-day classroom sessions for observers to provide in-depth training on the overall process, specific observer responsibilities, and administrative issues. We also provide refresher training during pre-briefing sessions on the day before the election. Whenever possible, we do role-playing in the training to demonstrate to the observers the proper way of handling themselves at the polling sites.

In brief, the deployment process works this way: Prior to an election, the Department notifies OPM as to when and where it will need observers. OPM then assigns a Voting Rights Coordinator to (1) work with Justice's lead attorney to allocate observers to polling sites; (2) coordinate logistics, such as arranging hotel meeting space and sleeping rooms for observers, leasing mobile phones, and making rental car and airline reservations to transport observers; and (3) assign a captain to oversee the execution of the deployment.

The day before an election, a Department attorney briefs the observers, specifying issues of concern and activities to report. For example, if a jurisdiction has been suspected of hampering non-English speakers' right to have interpreters or of not providing ballots in other languages as directed by consent decrees or court orders, the Department's attorney may ask that observers witness the provided assistance and/or make note of how many voters received language assistance. Observers may also be asked to note how many non-English speakers were turned away from polling sites or were given provisional ballots. Throughout the day, observers report such information to the captain, who passes this information to a Department attorney. Only the Department determines if intervention is necessary, and only the Department takes action. Toward the end of an election day, the Department determines when to call observers back. The observers then return to their staging site and prepare written reports—one for each polling site—to document what they saw and heard throughout the day.

That is the bulk of what OPM does. The statute also calls on OPM to have an examiner for each jurisdiction where observers will be assigned. Originally, examiners prepared a Federally maintained list of voters who were denied the right to register by State and local officials in covered jurisdictions, and they received calls from citizens regarding election-day issues or incidents. This function, however, has changed over the years. No voters have been added to the Federally maintained list since 1983 as registration barriers have been eliminated. Moreover, since there have been no challenges to registration decisions in the past 30 years, there has been no need for hearing officers. Also, due to advances in technology, toll-free numbers

allow citizens to report incidents and information to examiners remotely, in real time, and 24 hours a day during the election period.

Under the Act, OPM is required to publish voter registration qualifications of each covered State in the Federal Register. It has also been required to publish the list of examiners, places for voter registration, and examiner assignments. However, these publication requirements may no longer be necessary, since they are now covered nationwide by provisions of the Help America Vote Act (HAVA) and "Motor-Voter" statute (National Voter Registration Act), which set out Federal standards for voter registration.

OPM's Voting Rights Program costs have ranged from under \$1 million in earlier years to a high of \$4 million in the Fiscal Year that included the 2004 general election. Putting aside the expected increase in 2004, the overall trend has been for an increase in program coverage and cost, particularly for minority-language coverage.

That concludes my testimony, and I would be pleased to respond to any questions the subcommittee may have.

Mr. CHABOT. Thank you very much. Ms. Pew, you're recognized for 5 minutes.

**TESTIMONY OF PENNY L. PEW, ELECTIONS DIRECTOR,  
APACHE COUNTY, ARIZONA**

Ms. PEW. Thank you, Mr. Chairman, Members of the Subcommittee, for the opportunity to testify today for the reauthorization of section 6 and section 8, as they relate to section 203 of the Voting Rights Act.

As stated before, my name is Penny Pew, and I've been the Elections Director in Apache County since 2001.

And one of our primary focuses has been providing the minority and prospective voters the necessary election materials to ensure that each vote cast is an informed vote.

While this education began in the 1990's as a mandate, we continue to provide these services to our electors so that the rewarding changes that we have experienced will continue.

I would like to speak to the Federal Observer Program, which I believe was implemented following guidelines from the consent decree.

The Observer Program has successfully functioned as a check and balance feature in the translator program. One of the three-member teams sent to the 33 precincts on the Navajo Nation speaks Navajo, who I view as a partner.

During the day, these observers are able to witness poll workers and translators assisting the voters as they impart ballot information. The observers ask voters if they may observe the process. They do not interfere with the process and have never, to my knowledge, given any instruction to improve or to correct a process.

The observers note different scenarios occurring during the course of the day to ensure that fraudulent information is not given to voters. In some instances, the observers report happenings to their DOJ central contact, who I meet with on each Federal Election Day.

We are able to discuss the information relating to the day's events at the polling places. This is absolutely the best way for me to know instantaneously of situations that can be rectified in a very timely manner.

I explain to those poll workers that the individuals have been invited to help us do our duties. Observers are greeted by the inspector of the polling place in an attempt to put all parties at ease and

to assure the poll workers that the observers should not be viewed as hostile.

Identification is presented and worn by each observer throughout the day. Due to the rural area of Apache County and in an attempt to minimize their presence, observers are requested to dress casual to better fit their surroundings.

In follow-up post-election meetings, these notes are discussed, and, if necessary, changes are made in personnel or training procedures to ensure that no repeat incidents occur.

As you are aware, the Navajo language is unique and could be very easily misinterpreted. Translators who serve on these election boards attend exclusive training classes, which are taught by full-time outreach workers, using written copies, flip charts, cassette recordings.

During these classes, members are asked to read aloud the information together as a whole group. Open questions and clarifications are given by the outreach workers to ensure that each translator is uniform in their ballot translation, voter to voter, precinct to precinct.

In 2004, Apache County extended partnership to include the Navajo Nation Office of the Speaker. We provided various educational materials through chapter meetings, community forums, fair booths, and frankly anywhere there were voters.

I am pleased to report that this was a worthwhile project. As it turned out, Navajo Nation increased to 17,955 voters, comparatively to 14,277 voters in 2000. Additionally, the numbers increased in a precinct on the White Mountain Apache land from 44 voters in 2000 to 62 in 2004.

Now, as an Election Director, I've spent untold hours developing a program that is indigenous to Apache County. I've spent time in the polls and in the communities listening to these voters, learning what we as election directors can do to ensure that the most fundamental right as citizens of this great nation enjoy the right to an informed vote, with the knowledge that it will be counted without worry of fraudulent actions in or out of the polling place.

In closing, I fervently believe that is incumbent upon this Committee to use the expertise of each witness to further the Voting Rights Act, sections 6 and 8, Federal Examiner and Observer provision; and continuing programs such as the one used in Apache County.

The observer program has proven successful for us, and has given us insight to the happenings at each polling place that would otherwise go unnoticed.

For these and other additional reasons, which are stated in my written testimony, the reauthorization of these sections is critical to maintaining the robust program in Apache County.

And, again, thank you for your—for this opportunity.

[The prepared statement of Ms. Pew follows:]

PREPARED STATEMENT OF PENNY L. PEW

Thank you Mr. Chairman and committee members for the opportunity to testify before you today regarding the reauthorization of Section 6 and Section 8 as they relate to Section 203 of the Voting Rights Act, 42 U.S.C. 1973c.

My name is Penny L. Pew, and I am the elections director of Apache County in northeastern Arizona. I have had the pleasure of this position since June of 2001.

My primary focus has been on providing the minority and prospective voters, the necessary election materials to ensure that each vote cast is an informed vote. While this education began in 1982 as a mandate, we continue to provide services to our electors so that the rewarding changes that we have experienced will continue.

#### FEDERAL OBSERVER PROGRAM

Following a lawsuit charging Apache County with discrimination against Native Americans, as it related to election procedures and materials, a 1989 Consent Decree was entered establishing the Navajo Language Election Information Program. A portion of this program was the observer program which has successfully functioned as a check and balance feature to this program.

According to the 2000 census, the total population of Apache County is 69,423 persons, of whom 53,375 are Native American (76.9%). The voting age population of 42,692 persons, of whom 31,470 are Native American (73.7%); and that of all Native Americans of voting age, over one-third are limited-English proficient (11,377 persons).

Most of the 3 member teams sent to the 33 precincts located on the Navajo Nation have at least one Navajo speaking member, who I view as a "partner". During the day, these observers are able to witness poll workers and translators assisting the voters as they impart ballot information. The observers ask voters if they may observe the process. They do not interfere with the process and have never to my knowledge given any instruction to correct or improve a process. The observers note different scenarios occurring during the course of the day to ensure that fraudulent information is not given to voters. In some instances, the observers report happenings to their DOJ central contact, who I meet with on Election Day. We are able to discuss the information relating to the days events at the polling places. This is absolutely the best way for me to know instantaneously of situations that can be rectified in a timely manner.

I explain to the poll workers that these individuals have been 'invited' to help us as we do our duties. Observers are greeted by the Inspector of the polling place in an attempt to put all parties at ease and assure the poll workers that the observers should not be viewed as hostile. Identification is presented and worn by each observer throughout the day. Due to the rural area of Apache County and in an attempt to minimize their presence, observers are requested to dress casual to better fit their surroundings.

In a follow-up post election meeting, these notes are discussed and if necessary, changes are made in personnel or training procedures to ensure no repeat incidents.

Translators who serve on the election boards attend extensive training classes which are taught by full-time outreach workers using Power Point presentations, flip charts, cassette recordings as well as written copies, of the ballot information. Each translator and Inspector (lead poll worker) are provided a cassette and also written ballot information. During the training classes, each member is asked to read aloud the information. This is accomplished in a relaxed atmosphere where the class participates as a whole. Open questions and clarification are given by the outreach workers to ensure that each translator is uniform in their ballot translation, voter to voter, precinct to precinct.

#### VOTER OUTREACH AND EDUCATION

##### *Advertisements*

Apache County has provided bulletin boards to each chapter house facility where upcoming election information is posted and kept current. Voters have learned to use this tool in gaining the necessary election information. Periodic checks are done to ensure that only current information is posted.

Radio stations and newspapers have been instrumental in distributing the necessary election information. This was originally outlined in the Consent Decree 1989 with many additional measures added for further enrichment.

##### *Language Training*

As each of you are aware, the Navajo language is unique and without extensive linguistic training, could be misinterpreted. A Navajo Language Election Glossary has been developed over the years with input from outreach workers in Arizona, New Mexico, Utah, and the Navajo Nation in an effort to make the election terminology used county to county and state to state as uniform as possible. As times and technology change, the glossary is updated through proper approval.

The outreach workers use this glossary to translate ballot issues in a Tri-County forum to further ensure uniformity. This is imperative, as many precincts lie on

county lines where voters may see more than one county ballot, radio or newspaper ads or other informational materials.

*Translators/Poll workers*

Poll workers are given a detailed manual to use as a guide in fulfilling their obligations on Election Day, in a uniform manner. Additional items are distributed to ensure that the poll worker has all the tools necessary to assist the voter. In an effort to further educate, role playing was implemented and has proven to be a valuable tool in explaining ballot measures, as they are often very complicated.

Due to the extensive land area of over 11,000 square miles, training classes are held in various locations throughout the county to allow the poll workers and translators easier access to training. Each individual is compensated for their time to attend these classes.

After the training class, poll workers are encouraged to listen to their audio cassette and practice the issues. Many mentioned that they didn't have access to a player. So, in 2003, we established a cassette player library for workers to check out a player to listen and study the information. This was well received and the post election remarks indicated improvement; additionally, all cassette players were returned to the county library.

*State and County Monitoring of Effectiveness*

Meetings are scheduled on Tri-State and Tri-County levels to discuss any issues that may need to be remedied. Any/all issues are handled by each county official to keep uniformity in the informational disbursement process. Tri-county personnel work closely on translations and exchanges of information to better ensure uniformity in the disbursed information. NEA officials are invited and usually attend these meetings with valuable input on the issues.

*NEA (Navajo Election Administration)*

All information is approved by the NEA prior to distribution including but not limited to announcements (radio and print), ballot translations, audio tapes, and any other training information. All training schedules are provided to the NEA and an open invitation to attend any/all class.

The following is taken from a letter written to me by Kimmeth Yazzie, Navajo Nation Program Coordinator/Language contact:

"The purpose of the minority language Consent Decrees has generated a much greater cooperation and assistance to provide the necessary election and voter registration services to the Navajo Nation within the counties, much more than was anticipated from the beginning. Although the Consent Decree specific to Apache County expired in 1992, the county and the Navajo Nation continue to strive forward to this day to make voter registration and elections easier for the citizens in Apache County. Such services as situating outreach offices and Navajo speaking personnel in local areas with additional personnel when it becomes necessary, has made voting easier for the people of Apache County. An example, the development of the Navajo Glossary has opened doors to better communication with the Navajo Nation citizens as well as other tribes seeking development of the same methods of outreach. Developments of graphic materials and video and audio recordings provide our people with a better understanding of the elections. Bringing voter registration to the local area eliminates the long distance travels just to register to vote for outlying areas. Setting up and coordinating events together with the Navajo Nation and the county provides voters with two services at one location and a better understanding of the two distinctive elections. The clearance of all materials and information through the Navajo Election Administration provides assurance to the Navajo Nation that the proper and sufficient election information is provided to the people of the Navajo Nation, thus developing trust and alliance. Ideas to better provide services are always being exchanged between the county and the Navajo Nation. We learn from each other. Since the expiration of the Consent Decree in 1992, the relationship between the tribe and the county has grown and advanced beyond the bounds of the Consent Decree requirements.

In closing, I can honestly say that the language program has been positive for our county in educating and promoting our most fundamental right . . . the power of our vote."

*Outreach/Satellite Offices*

Apache County has two county district offices which are on Reservation Land; District I in Chinle houses a satellite office. District II in Ganado houses a second

office. Voters and residents of surrounding areas visit to check voter registration and to receive any election updates.

Regular meetings are scheduled and appear on agendas for the chapter visits at which time presentations are given using flip charts, PowerPoint presentations, audio aids as well as other means to convey the necessary information. Presentations are given in the Navajo language.

All political views of the outreach workers are kept unbiased and neutral at all times. Implementation to 'piggy-back' with the jurisdictions has been effective in that the outreach worker gives factual ballot information and the jurisdictions are available to answer any additional questions that the public may have.

#### *Deputy Registrars*

Deputy Registrars have proven valuable in assisting the voters in the ongoing voter registration and education process. Each Deputy Registrar is trained in current procedures. Each chapter office, Navajo Election Office and other Navajo Nation officials are trained and have provided further election information. Each chapter maintains a current voter listing, voter registration forms and during election cycles, early voting request forms.

#### *Collect Phone Calls*

Apache County happily accepts collect calls to assist the caller in election-related information. In an effort to better serve the people, an '800' number is advertised on all out-going materials and advertisements as well as the website.

#### *Voter Education*

Numerous items with voter information in distributed to spark interest in what has been viewed as boring in the past. Colorful brochures and interactive community meetings have been the focus in gaining voter recognition. For instance, during the Presidential Preference Election, February, 2004, in an effort to better explain who may vote, an informational brochure was produced in English, receiving positive input. A mirror copy was then distributed in the Navajo language. This helped gain further notice among the voters, with the outreach workers receiving community comments for further ideas in education. We also provide "I Voted" stickers in the Navajo language and it has been spectacular.

#### VOTER TURNOUT

In 2004 Apache County extended partnership to include the Navajo Nation Office of the Speaker in an effort known as "Get the Vote Out". Due to the low voter turnout experienced in past elections, we provided various educational materials at chapter meetings, community forums, fair booths, and anywhere there were going to be voters. I am pleased to report that this was a worthwhile project as turnout in precincts on the Navajo Nation increased to 17,955 voters casting ballots in 2004, comparatively 14,277 voters participated in 2000. Additionally, on the White Mountain Apache Lands, Apache County has one precinct where 44 voters participated in 2000, rising in 2004 to 62. This is due in part to the education at school and community meetings.

#### *Political Protocol*

During the 2002 election cycle, a non-Native American entered several polling places without the proper clearance. While inside the polling place, he intimidated the poll workers and voters, creating chaos as he progressed to various polls. For this reason alone, we implemented a Political Protocol presentation and accompanying brochure. The brochure is included in each candidate packet and a personal invitation to attend a short meeting outlining the proper protocol when campaigning on Native Lands. This is sent to each candidate, county, state or federal. We had great success and I am pleased to report that during the five elections which were held in Apache County in 2004, we had no reported violations in or around the polling places.

#### *Early Voting*

Ballot request forms are given to the Chapter Officials, County District offices on the Navajo Nation, State offices and the NEA. Outreach workers keep forms with them at all times while traveling and presenting throughout the county. These forms can also be accessed using the website [www.co.apache.az.us/recorder](http://www.co.apache.az.us/recorder).

Early Voting drives are unique in Apache County. After specified advertisements in newspaper and on radio, a trailer which has been painted in a patriotic motif travels to scheduled locations throughout the rural areas. This trailer can be found many places such as on fence lines, shopping lots, trading posts, and post offices to name a few.

*Election Day*

Apache County employs trained bilingual poll workers at each of the polling places on Native Lands. These poll workers are recruited with the help of chapter officials, postings and word of mouth.

Where joint elections are held between the Navajo Nation and the County, where polling places are shared, all efforts are made to make certain that the poll workers are trained and that a good working relationship is established between the Navajo Nation and the County officials to provide an enjoyable election day. The NEA and the County exchange poll worker lists to ensure that no candidate or close relative appears on either ballot.

Each polling place is monitored for effectiveness by a 'Troubleshooter.' This person is a county employee who has received training in the election process and is able to identify and correct irregularities on-the-spot. This person is the liaison between the county elections director and the polling place.

## CLOSING COMMENTS

As election director, I have spent untold hours developing a program that is indignant to Apache County. I have spent time in the polls and in the communities listening to the voters, learning what we as election directors can do to ensure that the most fundamental right as citizens of this great nation enjoy . . . the right to an informed vote with the knowledge that it will be counted without worry of fraudulent actions in or out of the polling place.

In closing, I fervently believe that it is incumbent upon this Committee to use the expertise of each witness to further The Voting Rights Act: Sections 6 and 8—Federal Examiner and Observer Provisions, in continuing programs such as the one used in Apache County, Arizona as it relates to the Native Americans. The observer program has proven successful for us and has given us insight to the happenings at each polling place that may otherwise go unnoticed. For these and other additional reasons, which are stated in my written testimony, the reauthorization of these sections is critical to maintaining the robust program in Apache County. Again, I thank you for this opportunity.

Mr. CHABOT. Thank you very much, Ms. Pew.  
Mr. Weinberg, you're recognized for 5 minutes.

**TESTIMONY OF BARRY H. WEINBERG, FORMER DEPUTY CHIEF  
AND ACTING CHIEF, VOTING SECTION, CIVIL RIGHTS DIVISION,  
U.S. DEPARTMENT OF JUSTICE**

Mr. WEINBERG. Thank you very much, and thank you for asking me to come here.

I may be one of the few witnesses that you have who is not connected with any office or organization, and probably one of the fewer witnesses that you're going to have that was there at the inception of the Voting Rights Act and saw the Federal examiners listing people to vote and saw the Federal observers when they first started.

But I know I'm the only one here among the witnesses who was a supervisor of the Federal Examiner and Observer Program in the Justice Department for 25 years, and it's from that vantage point that it seems to me that there are at least three questions that ought to be addressed now when we're thinking about the reauthorization of these provisions.

The first question is whether the provisions for Federal observers and Federal examiners are still needed. I think that the answer to that question is that the provisions for the Federal observers are crucial to the enforcement of the Voting Rights Act, and need to be reauthorized, maybe even made permanent; but the provisions for the Federal examiners not so much.

The Federal examiners' functions—most of them are outdated. The procedures are cumbersome and archaic, and I don't think they

serve any real purpose anymore. And so my conclusion would be that they're not needed anymore in the Voting Rights Act as it stands today.

The second question I think is whether there should remain a link between the certification of a county for Federal examiners and the later assignment of Federal observers to the county.

Under the Voting Rights Act, the certification of a county for Federal examiners is a prerequisite to the assignment of Federal observers.

But the functions that they perform, the link that they had, doesn't exist anymore. When Federal examiners first registered people to vote, those people had to go to polling places where there were hostile election officials. You had African-American voters facing hostile White polling place workers and voters for the first time in many, many rural areas across the South. The Federal observers were written into the act to watch what happened to those newly enfranchised voters and to allow the Justice Department to take action to assure their safety in the polling places. That situation just doesn't exist anymore, and I think the linkage is cumbersome and ought not to exist either.

The third question I think is whether the Federal observers ought to be continued as a law enforcement function under the Voting Rights Act, which is what they perform; or whether it's possible to make the reports and information from the Federal observers public after the election, as is done overseas.

I just got back last week from being an international observer in an election in Azerbaijan, and I've done that a few other times. The organizations that do that kind of work do it in order to publicize the information that they get from the polls immediately after the election.

But I think that would be a real mistake. I think that the use of Federal observers in law enforcement is important and ought to be continued and the publication of the information they get immediately would be detrimental.

All this revolves around what I consider the most important point, which is that the existence of Federal observers is crucial, and it's irreplaceable in the Voting Rights Act. After all, there's no other way for the law enforcement function of the Justice Department to be able to be performed with regard to harassment and intimidation and disenfranchisement of racial and language minority group members in the polling place on Election Day. And that's because State laws are written to keep other people, including Federal investigators out of the polls.

State laws, almost all of them—and they vary, but invariably they allow in the polls on Election Day the voters and the polling place officials, and they keep everybody else out. They allow police in if there's a disturbance, but mainly it's to have this safe harbor for voters on Election Day. But the effect of that, from a law enforcement point of view, is it keeps the law enforcement officers out. There is no way that the Justice Department lawyers could know about this harassment and this intimidation without the Federal observers, because the Voting Rights Act allows the Federal observers in. Federal observers are witnesses. They are the eyes

and the ears of the Justice Department attorneys in the polling places.

Without them, the law, the enforcement of the Voting Rights Act would be much abused, and so I would—my conclusion is that the observer provision is necessary. It ought to be reauthorized. It ought to be continued, and I think there should be some consideration given to making it permanent, taking it out of the special provisions and making it adjunct to sections 2 and 203 of the Voting Rights Act.

[The prepared statement of Mr. Weinberg follows:]

PREPARED STATEMENT OF BARRY H. WEINBERG

Statement of

Barry H. Weinberg

Before the

Subcommittee on the Constitution  
Committee on the Judiciary  
United States House of Representatives

Concerning

The Voting Rights Act: Sections 6, 7 and 8— Federal Examiner and Observer Provisions

November 15, 2005

Chairman Chabot, Ranking Member Nadler, distinguished members of the Subcommittee:

Thank you for inviting me to talk this afternoon about the federal examiner and federal observer provisions of the Voting Rights Act.

There are three central questions on the retention of the federal examiner and federal observer provisions of the Voting Rights Act:

1. Are the federal examiner and federal observer provisions still needed?

The federal observer provision is still needed. Most of the federal examiner provisions are no longer are needed.

2. Should the initial assignment of federal observers to a jurisdiction remain dependent on the certification of the jurisdiction for federal examiners?

No, but a certification-like decision should be required when federal observers are initially assigned to a jurisdiction.

3. Should the federal observer provision remain solely as a law enforcement tool, or should the findings of the observers be made immediately available to the public?

The federal observer provision should remain as a law enforcement function. Publication of the observers' findings would be detrimental to that function.

The following is an overview of the federal examiner and federal observer provisions of the Voting Rights Act, my experience with them, and the reasons why I

have answered the questions as I have. This recitation is followed by a detailed explanation of the Voting Rights Act's provisions for federal examiners and observers—Sections 6, 7 and 8 of the Voting Rights Act—and fact situations and federal court cases that demonstrate why the federal observer provisions are still needed.

**The federal examiner and federal observer provisions had a real impact on African Americans in the South.**

I was a lawyer in the United States Justice Department's Civil Rights Division from 1966 until my retirement in January 2000. Beginning in 1973 I was partly, and shortly thereafter, wholly in charge of the Justice Department's responsibilities for the federal examiner and federal observer programs. But I began working in the Civil Rights Division as a law clerk in the summer of 1965, and I was there on August 6, 1965, when the Voting Rights Act became law. Shortly after the Act was passed I was assigned to accompany the many other employees of the Civil Rights Division who were working out of an office set up in the federal building in Selma, Alabama. Our primary job was to investigate the beatings suffered by people who earlier that year attempted to march from Selma to Montgomery, Alabama, to protest the disenfranchisement of African Americans in Alabama.

I traveled with Civil Rights Division lawyers from county to county in West Central Alabama to determine the identity of the victims of those beatings and to interview them. As we traveled, we also got information on possible violations of the provisions of the Civil Rights Act of 1964, and we stopped into the offices where federal examiners were giving African Americans their first easy, safe and fair opportunity to register vote. (Local voter registration hours and locations were so restrictive that some white people took advantage of the easy federal voter registration opportunities too.)

Those events gave rise to the issues we are addressing now, 40 years later. A discussion of these issues can easily get blurred by a numbing recitation of legal statutes, provisions and clauses, because that is how the Voting Rights Act is written. I will set out those citations later in my statement by providing sections of an article my wife and I published in the Spring 2002 edition of the Temple Political and Civil Rights Law Review. But first I want to review the federal examiner and federal observer provisions of the Voting Rights Act as they applied to people and voting in the real world.

Under the structure of the Voting Rights Act, a federal examiner can be assigned to any site in the states and counties that are specially covered under the Act's formulae in Section 4, after the county has been certified by the Attorney General of the United States (or in any county certified by court order). Of course, under the structure of the Voting Rights Act, the federal examiners do not technically register people to vote: they examine applicants as to their eligibility under state voter registration laws that are otherwise Constitutional, and then put those applicants who are found to be eligible on a list. The list is given to the local county voter registrar who is required by the Voting Rights Act to enter the eligible applicants' names on the local voter registration rolls.

In the summer and fall of 1965 people were lined up day after day to take advantage of their first opportunity to register to vote. The federal examiners were Civil Service Commission investigators who had been pulled off of the routine jobs they had been doing and sent to sites in Alabama and other Southern states that had been designated by the U.S. Attorney General for federal listing. Besides listing voter applicants, the examiners were available to take complaints about listed people who had not been placed on the county voter registration rolls.

Those examiners were not, on the whole, a happy group. Their presence in small groups of two or three was obvious in town, and their work was opposed by many of white people there. In the main, they ate alone, walked alone and talked mostly to each other. The examiners were eager to know from us, on our rounds, when they would be able to go home. Still, they persevered, and in the end they accounted for the registration of tens of thousands of people who had been discriminatorily kept off of the voter registration rolls. From 1965 to 1972 federal examiners were responsible for the registration of over 170,000 voters. They achieved a signal victory in the fight against racial discrimination in voting.

As the Voting Rights Act is structured, federally registered voters have continuing protection against attempts at keeping them from voting. In any county that has been certified for a federal examiner, the Voting Rights Act authorizes the United States Office of Personnel Management (the successor to the United States Civil Rights Commission) to assign federal observers to polling places as requested by the U.S. Attorney General, to watch voting and vote counting procedures. (Note that the certification of a county for federal examiners is a prerequisite for the assignment of federal observers, but the presence of federally listed voters in the county is not.)

That protection was badly needed in the mid-1960s for newly registered African American voters as they entered the polling places and weathered the stares of white voters and the hostility of the polling place officials. Some examples of the humiliations they faced are set out later in my statement. But for now it is enough to know that they, too, persevered, and under the protective presence of the federal observers, they cast their ballots and participated in the political life of the county for the first time.

The federal observers' job is to watch and take notes. If polling place officials choose to violate their own procedures in order to humiliate racial or minority language voters, or intimidate them, or refuse to allow them the same voting privileges in the polls as the white voters, the federal observers cannot intervene. The observers in a county have co-captains who travel from polling place to polling place, checking with the observers and getting information from them. Those observer co-captains call regularly to a central office established by the Office of Personnel Management. Originally, and for many years, this central office was known as the examiner's office, which had been established for the examiner to take complaints as is required by Section 12(e) of the Voting Rights Act. In the examiner's office there also was a lawyer from the Justice Department's Civil Rights Division (usually from the Voting Section, *nee* Voting and Public Accommodations Section). Today, since the examiner has little or no function,

especially in a county where there are no federally registered voters, the office used in the county on election day is referred to as the captain's office. The observer captain along with a Civil Rights Division attorney are there to receive the calls and the information from the observer co-captains.

When irregularities arise the Division lawyer relays the information about the irregularities to the county official in charge of the election, and allows the county official to take action to correct the irregularities. Where corrective action is not taken or is inadequate, a civil action can be filed later under the Voting Rights Act. A civil action, such as the one described below involving Conecuh County, Alabama, can use the reports of federal observers as effective and unassailable evidence of racially discriminatory actions of polling place officials. After the election the observers provide their reports to the federal examiner, the Attorney General and, if appropriate, to a federal court (if the county is certified for an examiner by a court).

The work of the federal observers as described here continued in the South largely unchanged through the 1990s. These procedures apply too, to the work of federal observers in other areas of the country with important modifications to deal with geographical differences and activities in polling places involving minority language voters.

**Federal observers are necessary, federal examiners are not necessary.**

Violations of the Voting Rights Act continue to happen in polling places throughout the United States. The need for federal observers to document discriminatory treatment of racial and language minority voters in the polls has not waned. The use of a thousand or more federal observers at election after election beginning in 1965 decreased to the use of hundreds of observers at elections after the early 1980s as a result of the effective enforcement of the Voting Rights Act in Southern states. But the enforcement of the language minority provisions of the Voting Rights Act, added in 1975, has required the use of hundreds more federal observers to disclose to Justice Department attorneys evidence of harassment of members of language minority groups, and instances where ballots and other election material and procedures are not available to those voters in a language they can understand. The result is that between 300 and 600 federal observers continued to be needed annually from 1984 to 2000.

The facts supplied by federal observers to Civil Rights Division attorneys are crucial and irreplaceable in the enforcement of the Voting Rights Act. Most parts of the voting process are open to the public, and the evidence of Voting Rights Act violations that are involved in the voting process can be obtained by Justice Department lawyers through routine investigations. But most state laws limit access to polling places on election day, allowing only voters and polling place officials to remain in the polls (police are allowed too when called to deal with disturbances). Thus, unless an exception is made in these rules to allow federal investigators to get special access to the polls, the harassment of racial and minority language voters and other violations of the Voting Rights Act inside the polling places would go unseen and unchecked.

Federal observers have special access to polling places under the authority of the Voting Rights Act even where access to Justice Department attorneys is otherwise barred. Federal observers thus become the attorneys' eyes and ears. The discriminatory treatment of racial and minority language voters witnessed by the federal observers, as discussed in detail below, runs the gamut from actions that make those voters feel uncomfortable by talking rudely to them, or ridiculing their need for assistance in casting their ballot, to actions that bar them from voting, such as failing to find their names on the lists of registered voters and refusing to allow them to vote on provisional ballots, or misdirecting them to other polling places.

Minority language voters suffer additional discriminatory treatment when people who speak only English are assigned as polling place workers in areas populated by minority language voters. The polling place workers fail to communicate the voting rules and procedures to the voters, or fail to respond to the voters' questions. In some instances, qualified registered voters have been told that they are not permitted to vote because they have not furnished necessary information, such as their address, even when they have provided the information; the poll worker was unable to understand what the voters were saying, but a speaker of the minority language would have understood.

Civil Rights Division lawyers who receive facts from federal observers about violations of the Voting Rights Act provide those facts directly to the election officials in the jurisdictions involved, allowing them to take corrective action in compliance with the Act. In other instances, those facts are used to secure court orders requiring that the jurisdictions involved to comply with the dictates of the Voting Rights Act. In either approach, the end result fulfills the goal of the Voting Rights Act to allow United States citizens to cast their ballots on election day freely and fairly, without distinction because of their race or membership in a language minority group.

That the work of the federal observers is a part of a law enforcement effort—the enforcement of the Voting Rights Act—is especially true where the information from the federal observers is provided in the context of a lawsuit, where a court has certified a county that was not specially covered under the Voting Rights Act. In that situation, the information is given to the court and affects the position of the parties (the Justice Department and the county) with respect to the actions the jurisdiction must take to comply with the Act (the relief that is ordered in the case). Some local election officials have come to welcome the information obtained by federal observers as an additional source showing the extent to which the county's polling place officials are complying with the provisions of the Voting Rights Act.

However, the initial assignment of federal observers to a county today remains dependant on the certification of the county for the assignment of federal examiners even though federal examiners are largely unnecessary any more for listing voter applicants. There has been no federal listing of voters since the 1970s, apart from an isolated flurry of voter listing in Georgia in 1982 and another isolated flurry in Mississippi in 1983. Discriminatory actions against racial and language minority group members are not

caused by their status as federally registered voters. And examiners no longer receive complaints on election day with respect to federally listed voters. I do not recall any complaints that were received centering on mistreatment of federally listed voters over the last 20 years of my supervision of the federal observer and examiner programs, and few, if any such complaints before that. (Complaints about other matters are made to the examiner, but they routinely involve matters for which the federal observers have been assigned to the county, and are just as easily, and more effectively fielded by the federal observer captain in the county.) Moreover, the enforcement of the Voting Rights Act and the enactment of new easy voter registration laws, such as the National Voter Registration Act (the motor voter law), have made the possibility of future listings by federal examiners highly unlikely.

Further, the Office of Personnel Management must continue to keep the lists of federally listed voters up to date regarding changes of name, changes of address and, as the years have gone by, of deaths. Those voters cannot be removed from the voter rolls without the approval of the Office of Personnel Management, and the lists continued to be provided for election day use by those counties where there are federally listed voters. In fact, these lists are no longer used for any practical purpose, and their maintenance should be discontinued.

It is possible that federal examiners may be needed in the future for voter listing in a situation where the dictates of the Voting Rights Act are met, so the Voting Rights Act's authorization for federal examiners to conduct listing activity should be retained. But there is no reason to continue to tie the assignment of federal observers to the appointment of a federal examiner. I believe that, apart from the possible need for listing voters, the federal examiner provisions are outdated and are no longer needed in the Voting Rights Act, especially the requirement that an examiner be appointed as a prerequisite for the assignment of federal observers to a county.

But the procedure for the certification of a county for federal examiners under Section 6 of the Act serves an important purpose: it requires the Justice Department to conduct an intensive investigation to support the certification, and thus makes the federal government responsible for taking action regarding local election procedures only on the basis of complete and compelling facts. I believe that some manner of certification should remain a prerequisite for the initial assignment of federal observers to a county and, once certified, that a county would remain certified, as is now the case, until it acted to eliminate the certification (the formula under Section 13 for terminating certification would be changed).

If such a new certification procedure would be instituted, the requirement that the United States Attorney General personally must sign the certification, as is now the case, would be unnecessary. This authority for executing a certification should be allowed to be delegated to the Assistant Attorney General for Civil Rights. To my recollection, the Attorney General has signed every certification that has been recommended by the Assistant Attorney General for Civil Rights. Nor would the Attorney General's signature be needed any more to assure the importance of the certification if the only consequence

of a certification would be simply to allow federal observers to witness polling place procedures. The delegation to the Assistant Attorney General for Civil Rights of the responsibility for a certifying a county for the presence of federal observers would be similar to the delegation of authority to the Assistant Attorney General to object to changes in voting practices and procedures under Section 5 of the Voting Rights Act.

The purpose of the present requirement in the Voting Rights Act that the Attorney General's certification of a county be published in the Federal Register is to give notice of the location of the federal examiner's office. Since it no longer will be necessary to have an office for a federal examiner when federal observers are assigned, the publication of the location of that office also will be unnecessary. Those who will most need to know of the assignment of federal observers—county officials and minority group representatives—always are informed personally by Civil Rights Division attorneys, and other members of the community easily learn of the observers' presence from Division attorneys, local press reporting and word of mouth.

Accordingly, I believe that the federal observer provision is still necessary to the enforcement of the Voting Rights Act, but the Voting Rights Act no longer should tie the assignment of federal observers to the appointment of a federal examiner. The Act should allow a certification function, newly directed only to the assignment of federal observers, to be delegated to the Assistant Attorney General for Civil Rights. The requirement for publication of the certification in the Federal Register—an adjunct of the federal examiner function—should be eliminated as a prerequisite to the initial assignment of federal observers.

**Federal observers' work should continue to be a law enforcement function.**

I also recommend that the function of the federal observers remain as it is: as witnesses in a law enforcement function. The question arises because, since my retirement, I have been an observer four times in other countries as a part of an international observer corps assembled by the Organization for Security and Cooperation in Europe (OSCE) under its Office for Democratic Institutions and Human Rights (ODIHR). The forms these observers use list polling place procedures and have a place for the observer's rating from good to bad (1 to 3, or 1 to 5) for each procedure. There are separate forms for the opening of the polls, for voting during the day, and for the closing of the polls. A fourth form allows for fuller explanation of any item or event.

The object of the observation by ODIHR is to report information for public consumption as quickly as possible. During election day the observers send their forms to ODIHR headquarters in the country's capitol at mid-morning, shortly after noon, and just before the polls close; the remaining forms are dropped off when the observers return from the vote count to their regional lodging sites throughout the country. This way, by the afternoon of election day OSCE/ODHIR knows how the election is going, whether there are serious problems, and if so, what they are and where they are. Then, on the morning after the election, OSCE issues its judgment on whether the election was conducted according to international standards or was marred by irregularities.

But OSCE is not a law enforcement organization, and its approach would not be appropriate to the job of the Justice Department. Some of the irregularities that the federal observers can witness are not dissimilar from the kind of procedural irregularities that are common to elections held in emerging democracies. The extra identification steps required of Arab Americans in Hamtramck, Michigan, and the harassment they encountered, described below, are an example. But the similarity of some situations to those addressed by international observer groups such as the OSCE does not argue for redesigning the federal observer program under the Voting Rights Act to resemble those organizations' efforts.

In fact, the federal observer program is an effective law enforcement program as it is now constituted. If observers are desired to watch polling place activities for other purposes, those functions should be performed by other observers serving other functions. "Domestic" observers in other countries are allowed into the polling places to get information for their candidates, or political parties, or organizations, and routinely publicize the activities they witness. Those countries' elections, however, are conducted centrally, by a central (in the U.S. it would be a federal) election commission, and the observers' activities are under that central control. The laws of those countries specifically allow domestic as well as international observers into the polling places. The observers are granted permission to be in the polls and are issued identification tags for that purpose by the central or district election commissions, which can withdraw that permission at any time.

This kind of observation is not a matter within the purview of existing federal legislation in this country, and to have federal legislation allowing these kinds of observers in polling places a record would have to be established by the United States Congress justifying their presence in connection with federal elections. On the other hand, in the United States access to the polling places is controlled by state law, and some states allow such observers into the polling places now. States routinely also allow the press into the polls to witness the activities there. Finally, redacted versions of the federal observers' report forms may be obtained under the Freedom of Information Act (FOIA) subject to the FOIA rules and the Privacy Act.

The following analysis provides the specific support for my conclusion that the federal observer provision of the Voting Rights Act should be continued because it is clearly needed to provide the Justice Department with evidence of violations of the Voting Rights Act's prohibitions against discrimination in the polling places against racial and language minority group members. This analysis is taken from an article my wife and I wrote for the Temple Political and Civil Rights Law Review, Spring 2002 edition, Vol. 2, Number 11.

**The special provisions of the Voting Rights Act were compelled by resistance to African Americans' voting rights.**

012340

Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

*South Carolina v. Katzenbach*, supra at 328.

The Voting Rights Act (the "Act") cut through the protective barrier of federalism with two important sections. Section 5 of the Act, 42 U.S.C. § 1973c (the "preclearance" provision), required federal review of any new voting procedures that states and counties might adopt. This prohibited the adoption of new discriminatory practices when a jurisdiction's present practices were found to be unlawful. And Section 4 of the Act, 42 U.S.C. § 1973b, instantly led to the enfranchisement of thousands of people by suspending the use of literacy tests and similar discriminatorily applied barriers to the registration of African Americans in the Deep South.<sup>1</sup> Some states, such as Virginia, immediately stopped using literacy tests. In other Southern states, federal examiners were appointed under Section 6 of the Act, 42 U.S.C. § 1973d, assigned to counties to conduct fair voter registration under Section 7 of the Act, 42 U.S.C. § 1973e, when white county officials refused to stop their racially discriminatory voter registration practices.<sup>2</sup> This was no small task, as over 170,000 people were registered between 1965 and 1972 through the efforts of the federal examiners, mostly in Alabama, Georgia, Louisiana, and Mississippi. *Semiannual Report of Cumulative Totals on Voting Rights Examining as of*

<sup>1</sup> These "tests or devices" were suspended in states and counties determined by a formula in Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b, based on the use of literacy tests and other pre-application devices (such as having current voters vouch for your good moral character), and low voter turnout. Later, this provision was made permanent and nationwide. 42 U.S.C. § 1973aa. Originally, states and counties covered under the formula in Section 4 of the Act could terminate their special coverage ("bail out") after five years by showing in a lawsuit before a three-judge court in the federal district court for the District of Columbia, that no test or device had been used to deprive anyone of the right to vote during that period. Since the Act itself suspended those tests or devices for only 5 years, it was thought that it would be relatively simple for states and counties who complied with the suspension to bail out after the 5-year period. In 1970 the time period in Section 4 was extended to 10 years, in 1975 it was extended to 17 years. In 1982 the approach was changed, and the special coverage under Section 4 will expire 25 years after August 5, 1984, the effective date of the 1982 Amendments, 42 U.S.C. § 1973b(a)(8). In 1982 the bail-out provisions were amended substantially to allow individual counties within a fully covered state to bail out, and to set out a number of specific qualifications that a jurisdiction needs to meet in order to bail out. 42 U.S.C. § 1973b(a)(1)-(3).

<sup>2</sup> The examiners are commonly referred to as federal registrars. These were people appointed by the head of the Civil Service Commission, now the Office of Personnel Management, to examine voter applicants as to their qualifications under state law. If the applicants satisfied the state requirements, their names were put on a list that was given to the county registrar, who then had to add them to the county voter registration rolls. In this way, some semblance of state authority over the voter registration process was preserved: registrars satisfied state requirements, and a state-authorized official put the voters' names on the rolls. 42 U.S.C. § 1973e(b). To safeguard against discriminatory purges of those newly enfranchised voters, their names cannot be purged from the voter rolls without the approval of the Office of Personnel Management. 42 U.S.C. § 1973e(d).

*December 31, 2000, Prepared by the Office of Workforce Information, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management. See Appendix A for the number of people, by state, registered by federal examiners.*

Further, in order to allow the U.S. Attorney General to know whether discriminatory action was taken against the newly enfranchised voters in the polling places on election day, Section 8 of the Act allowed that, whenever an examiner has been appointed,

[T]he Director of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election...for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election...for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

42 U.S.C. § 1973f.

Thus, the use of federal observers in polling places initially was directed at protecting the rights of new voters who had been registered by federal examiners. Even though federal voter registration was rare after 1972, the predicate under the Voting Rights Act for assigning federal observers has not changed: federal observers continued to be allowed only in counties that had been certified by the U.S. Attorney General for federal examiners. As a result, to allow the assignment of federal observers to a county, the county had to be certified by the U.S. Attorney General or a federal court (under Section 3(c) of the Act, 42 U.S.C. § 1973a(c)) for federal examiners.<sup>3</sup> The assignment of federal observers continues to be a cornerstone of the enforcement of the Voting Rights Act. Over 23,000 federal observers have been assigned to monitor polling place procedures since 1966, 4,393 since 1990 alone.<sup>4</sup> See Appendix B, Assignment of Federal Observers Under Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f, by Year and State.

<sup>3</sup> Since the federal examiner and federal observer provisions of the Voting Rights Act focus on political subdivisions, which ordinarily are counties, a county must be certified for federal examiners even if the object is to assign federal observers to monitor polling places during a city or other election, such as a school board election, within the county. See 42 U.S.C. §§ 1973d, 1(c)(2).

<sup>4</sup> There were 4,698 federal observers assigned to polling places in 5 states from 1966 through 1969; 7,034 federal observers were assigned to 9 states in the 1970s; 6,598 federal observers were assigned to 11 states in the 1980s, and 3,753 federal observers were assigned to 13 states in the 1990s. In 2000, 640 federal observers were assigned to 11 states. See, Appendix B.

**Federal observers witnessed clear racial discrimination at the polls.**

Federal observers were able to note and document a wide variety of discriminatory actions that were taken against African Americans in the polls. Some of these actions were insulting and direct, as are reflected in the United States' responses to interrogatories in *United States v. Conecuh County, Alabama*, Civil Action No. 83-1201-H (S.D. Ala., Jun 12, 1984).<sup>5</sup> See Appendix C.

While providing assistance to a black voter, white poll official Albrecht asked, "Do you want to vote for white or niggers?" The voter stated that he wanted to give everyone a fair chance. Albrecht proceeded to point out the black candidates and, with respect to one white candidate, stated, "This is who the blacks are voting for." Poll official Albrecht made further reference to black citizens as "niggers" in the presence of federal observers, including a statement that "niggers don't have principle enough to vote and they shouldn't be allowed. The government lets them do anything."

Plaintiff's Response to Interrogatories and Request for Production of Documents, p. 6.

White poll workers treated African American voters very differently from the respectful, helpful way in which they treated white voters. When questions arose about the voter registration data for a white person, such as a person's address or date of registration, or when a white person's name was not immediately found on the poll books, the voter was addressed as Mister or Misses, was treated with respect, and the matter was resolved on the spot. If the voter's name was not found, often he or she either was allowed to vote anyway, with his or her name added to the poll book, or the person was allowed to vote a provisional or challenged ballot, which would be counted later if the person were found to be properly registered. If, however, the voter was black, the voter was addressed by his or her first name and either was sent away from the polls without voting, or told to stand aside until the white people in line had voted. African American voters were not allowed to take sample ballots into the polls, and were made to vote without those aids (it was claimed by white officials that the sample ballots were campaign material which was prohibited inside the polls).

African American voters who were unable to read and write, due in large part to inferior segregated schools and the need to go to work in the fields at an early age, were refused their request to have someone help them mark their ballot, notwithstanding the Voting Rights Act's bar on literacy tests. In some instances, white poll workers would loudly announce the African American voter's inability to read or write, embarrassing the

<sup>5</sup> The federal observers' reports are not public documents, so there are very few examples on the public record of the facts that the observers have witnessed. One such public document is the Plaintiff's Response to Interrogatories and Request for Production of Documents in *United States v. Conecuh County, Alabama*, supra. Some of the specific examples of the kind of discriminatory treatment that was afforded African American voters described in the text that follows are taken from the excerpts of the *Conecuh County* responses at Appendix C, while others are based on the author's first-hand knowledge.

voter in front of his or her neighbors. Some white poll workers went so far as to bring a magnifying glass to the polls, and give it to African American voters, challenging the voter to read using the magnifying glass in front of everyone present at the polling place. Illiterate white voters, on the other hand, were allowed assistance by a person of their choice without comment. White couples routinely were allowed to enter the voting booth together to mark their ballots.

In instances where African American voters were allowed an assistor in the booth, arbitrary rules were concocted that limited the number of voters an assistor could help, or made the assistor wait outside the polling place, requiring the voter to enter the polls alone and negotiate alone the sign-in procedures administered by unfriendly white poll workers, before being allowed to ask that the assistor be allowed to help.<sup>6</sup> All too often, when the voter said he or she needed assistance the white poll worker would proceed to help the voter, and not give the voter a chance to ask for the assistor the voter wanted; the voter did not know if the poll worker cast the ballot as the voter desired, and had no confidence that the ballot was cast correctly.

Moreover, racial discrimination in the polls is not limited to African Americans, and is not limited to the South. On November 2, 1999, in the City of Hamtramck, Michigan, the qualifications of more than 40 voters were challenged on grounds that they were not citizens. They were challenged by members of a group known as Citizens for a Better Hamtramck (CCBH), organized to keep elections pure. As described in the Consent Order and Decree in *United States v. City of Hamtramck*, Civil Action No. 00-73541 (E.D. Mich, Aug 7, 2000),

6. ... Some voters were challenged before they signed their applications to vote. Other voters were challenged after they had signed their applications and their names had been announced. The challenged voters had dark skin and distinctly Arabic names, such as Mohamed, Ahmed, and Ali. The challengers did not appear to possess or consult any papers or lists to determine whom to challenge.

7. Once challenged, the city election inspectors required the challenged voters to swear that they were American citizens before permitting them to vote. Voters who were not challenged were not required to do so. The city election inspectors did not evaluate the propriety of merit of the challenges. Some dark-skinned voters produced their American passports to identify themselves to election officials. Nevertheless, these persons were challenged by CCBH, and the election inspectors required them to take a citizenship oath as a prerequisite to

<sup>6</sup> After the Voting Rights Act enabled African Americans in the Deep South to register to vote, it became common for civil rights workers and local African American residents to drive the new voters to the polls and to give assistance to those who needed it. This was a natural outgrowth of the organizing required during the civil rights movement to achieve voter registration for black people. It provided transportation—many people did not have cars—and gave confidence and protection to these newly enfranchised voters at the polling places from which they had so recently been excluded by white poll workers and voters who did not want them there. This tradition of “hauling” voters to the polls and giving assistance to voters who need it continues today, especially in many rural areas.

voting. No white voters were challenged for citizenship. No white voters were required to take a citizenship oath prior to voting.

at p. 4.

The consent decree also states that city officials were apprised of the incidents, that they consulted with state election officials who were present in Hamtramck on election day, but neither the state nor the city election officials prevented the baseless challenges from continuing. It was claimed that other Arab-American citizens may have heard about the incidents and decided not to go to the polls to vote that day.

**Federal observers witnessed clear discrimination against language minority group members at the polls.**

Besides discriminatory treatment of citizens based on race, citizens who speak English poorly, or not at all, have faced obstacles to voter registration and voting. In 1975 Congress took note of discrimination against people who have only a limited ability to speak English. For them, printing or providing information only in English as effective as a literacy test in keeping them from registering to vote or casting an effective ballot. Such disenfranchisement was outlawed when the Voting Rights Act was amended and expanded in 1975. The terms of Section 4 of the Act, containing the formula for applying special coverage to counties, were changed to include among prohibited tests and devices,

[T]he practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance or other material or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority.

42 U.S.C. § 1973b(f)(3). Language minorities are defined in the Voting Rights Act as American Indian, Asian American, Alaskan Natives, and people of Spanish heritage. 42 U.S.C. § 19731(c)(3). Political subdivisions as defined in the Act usually are counties. 42 U.S.C. § 19731(c)(2).<sup>7</sup>

The 1975 amendments to the Act required that when the newly covered jurisdiction

... provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language...

<sup>7</sup> The jurisdictions subject to the special provisions of the Voting Rights Act are listed in the Appendix to 28 U.S.C. Part 51.

012345

42 U.S.C. § 1973b(f)(4)<sup>8</sup>

Counties in Arizona, New Mexico and Utah were certified for federal examiners, and federal observers were assigned to document the extent to which the English language was used in areas where many of the voters spoke Native American languages but understood English only marginally. Similarly, federal observers have been assigned to polling places in Spanish language areas of Arizona, Texas, New Jersey and New York City, and Chinese language areas of New York City, and San Francisco and Oakland, California.<sup>9</sup> In all these areas minority language citizens were allowed to register to vote, but the use of the English language instead of the voters' first language prevented them from understanding the voting instructions and the ballot. Polling place workers either were not able to speak the language of the voters, or if they could, were not trained to translate the documents and procedures into the language of the voters. By the 1990s federal observers were assigned to monitor discrimination against language minority group members in numbers equal to the federal observers assigned to monitor non-language racial discrimination.<sup>10</sup>

The need for the language minority provisions of the Voting Right Act continues to be demonstrated in areas of the country where English is not persons' primary language. Normally one would assume that polling place workers would be chosen from the population where the polling place is located, and that they would speak another language in addition to English with the same frequency as the voters. In many instances, however, this did not happen. For example, in ethnically changing neighborhoods in New York City, the choices of the political party apparatus resulted in the repeated appointment of English-speaking poll workers where a large portion of the new voters in a precinct were Spanish-speaking Puerto Ricans. In Passaic, New Jersey, English-speaking poll workers were unable to find the names of Spanish-speaking voters

<sup>8</sup> A parallel requirement was added in Section 203 of the Voting Rights Act in 1975 for counties determined by different formula. 42 U.S.C. § 1973aa-1a. Section 203 of the Act does not include the other special provisions of Section 4, such as the preclearance, federal examiner and federal observer provisions. Lawsuits under Section 203 must be brought before a three-judge court. As a result of amendments since 1975, coverage under Section 203 now applies to counties that have more than 5 percent of voting age citizens who are members of a single language minority and are limited-English proficient; have more than 10,000 voting age citizens who are members of a single language minority and are limited-English proficient; or have a part of an Indian reservation, and more than 5 percent of the American Indian or Alaska Native voting age citizens are members of a single language minority and are limited-English proficient; and the illiteracy rate of the language minority group citizens is higher than the national illiteracy rate. 42 U.S.C. § 1973aa-1(a)(2). The counties covered under the language minority provisions of Sections 4 and 203 are listed in the Appendix to 28 U.S.C. Part 55.

<sup>9</sup> Counties in Arizona, New York and Texas were certified by the U.S. Attorney General. Counties in California, New Mexico and Utah were certified by federal district courts under Section 3(c) of the Act, 42 U.S.C. § 1973a(c). Section 3(c) provides for certification in a lawsuit brought "under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment... (1) as part of any interlocutory order... or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred..."

<sup>10</sup> From 1990 through 2000, there were 2,449 federal observers assigned to elections in the states of the Deep South, very few of which involved discrimination against language minority group members, and there were 2,215 federal observers assigned to monitor elections in other areas of the country, most of which involved discrimination against language minority group members. See Appendix B.

in the polls books because the poll workers did not know that the voters' family name traditionally was the second of three names they used. Some voters were denied the ballot because they identified their street name according to common Spanish usage rather than the formal English name.<sup>11</sup> In Texas and Southern Arizona polling places Hispanic voters were admonished not to use Spanish when talking in the polling places and when giving assistance to voters who needed help when voting. Moreover, the citizenship of Hispanic voters was questioned at the polls, with voters being required to somehow provide on-the-spot evidence of their citizenship before being given a ballot; such evidence was not required of Anglo voters.<sup>12</sup>

Evidence of other kinds of discriminatory behavior of polling place workers and others toward Spanish language voters inside the polls is provided in the reports of the Independent Elections Monitor appointed in September 2000 by the court in a consent decree in *United States v. Passaic City, New Jersey, and Passaic County, New Jersey*, Civil Action No. 99-2544 (NHP) (D.N.J., Sep. 5, 2000)(three-judge court).

At P.S. 6, observers called to report that the challenger was making racist remarks about Hispanics. At the Ukrainian school, challengers became very aggressive and were yelling at voters, stating that they did not live in the country and should not vote. Ironically, many of these challenged voters were off-duty Passaic City police officers. Angel Casabona, Jr. was one such challenged police officer who avoided confrontation and properly came to Passaic City Hall to have his voting status clarified. Escorted by the City Clerk and investigators from the prosecutor's office, Mr. Casabona reentered the polling site and was permitted to exercise his vote. The brazen challenger was reprimanded and board workers were reminded that challengers should not be interacting with voters.

Walter F. Timpone, Office of the Election Monitor, Fifth Report, June 15, 2001, pgs. 3-4.

The most disturbing incident of the [June 26, 2001 municipal primary election] occurred at the polling place at St. Mary's School in Passaic. Someone allegedly stole the flag from outside the polling place. The police were called. An officer responded and caught the purported perpetrator. The Officer entered the polling place and asked who had called the police. No one responded. The officer barked comments in substance to the poll workers as follows, "Can't you read? What country do you come from?" When a municipal worker of Indian origin came to see what the problem was, the officer then asked, "And what country do you come from?" When a Latino federal observer tried to explain the

<sup>11</sup> Mail addressed to streets using the Spanish nickname was delivered because the postal personnel were familiar with the local Spanish language usages, as the poll workers were not.

<sup>12</sup> Anglo candidates compiled lists of Hispanic voters' names for their poll watchers to challenge at the polls on the ground that the voters were not citizens. United States citizenship is required by every state as a qualification to register to vote in state and federal elections. But in order to avoid discriminatory treatment of voters at the polls and disrupting the polling places with election-day challenges, persons who, before an election, have evidence that a registered voter is not a U.S. citizen should be required to present that information to the voter registrar, and to desist from interposing challenges at the polls to voters whose qualifications have been upheld by the registrar.

dictates of the consent decree, the officer asked for credentials. When the observer showed his credentials, the officer found them inadequate because they lacked a picture and detained the observer. The Officer told the observer, "I could arrest you for this." Upon being alerted to the controversy, I asked investigators from the Passaic County Prosecutors Office and Deputy Chief of the Passaic County Police Department to intercede. When a Sergeant from the Passaic Police department responded at the scene and learned what had happened, he apologized to the federal observer and told him he thought some sensitivity training might be in order for the officer. Notably, this discriminatory behavior took place in a city where the Latino population is at 62%. Intolerance in the city is still existent and hiding under color of official right.

Walter F. Timpone, Office of the Election Monitor, Sixth Report, July 27, 2001, pp. 6-7.

The use of English rather than Chinese in polling places in Chinese neighborhoods of San Francisco and Oakland (Alameda County), California, and New York City left voters confused about procedures, and ignorant of ballot propositions and contested offices. As was noted in the Settlement Agreement and Order in *United States v. Alameda County, California*, C95 1266 (N.D. Cal, Jan 22, 1996)(three-judge court),

According to the 1990 Census, the population of Alameda County includes 68,184 Chinese Americans and 30,120 Chinese American citizens of voting age. The 1990 Census reports that 11,394 persons, or 37.83 percent of the Chinese citizen voting age population in Alameda County, and 1.3 percent of the total citizen voting age population in Alameda County do not speak English well enough to participate effectively in English language elections. Thus, over 11,000 Chinese American citizens in Alameda County cannot function effectively in the electoral process except in the Chinese language.

at p. 4.

Problems were compounded in Native American areas of Arizona, New Mexico and Utah. The problems faced by Native Americans in these areas are illustrated in Cibola County, New Mexico, which contains the Ramah Chapter of the Navajo Reservation and the Acoma and Laguna Pueblos. The Stipulation and Order in *United States v. Cibola County, New Mexico*, No. Civ 93 1134 LH/LFG, (D.N.M., Apr 21, 1994)(three-judge court), states that,

5. According to the 1990 Census, 57.8 percent of the Navajo voting age population and 18.1 percent of the Pueblo voting age population in Cibola County do not speak English well enough to participate effectively in English language elections. Thus, a significant proportion of the Native American population of Cibola County, and a significant majority of Navajos, cannot function in the electoral process except in the Navajo or Keresan languages.

6. The Navajo and Keres populations of Cibola County live in circumstances of significant isolation from the non-Native American population of the county. Cibola County is unusually large in physical terms, and covers a geographic area roughly the size of the State of Connecticut. Over four-fifths of the non-Native American population lives clustered within or near the adjacent incorporated communities of Grants and Milan, close to the county courthouse. The Acoma and Laguna population centers are between 25 and 50 miles away from Grants, the county seat, while the Ramah Chapter House is approximately 50 miles from Grants. The isolation of the Native American population of Cibola County burdens their access to the franchise.

8. Native American citizens living within Cibola County, suffer from a history of discrimination touching their right to register, to vote, and otherwise to participate in the political process. Until 1948, Native American citizens of New Mexico were not permitted to vote in state and local elections. *Trujillo v. Garley*, C.A. No. 1350 (D.N.M., August 11, 1948). In 1984, the court in *Sanchez v. King*, C.A. No. 82-0067-M (D.N.M. 1984) held that the New Mexico state legislative redistricting plan discriminated against Native Americans.

9. The level of political participation by Native American citizens of Cibola County is depressed. Voter registration rates in the predominantly Native American precincts have been less than half the rate in non-Native American precincts, and Native Americans are affected disproportionately by voter purge procedures. Although Native Americans comprise over 38 percent of the county population, fewer than eight percent of all absentee ballots have been from the predominantly Native American precincts. There is a need for election information in the Navajo and Keresan languages, and a need for publicity concerning all phases of the election process for voters in Ramah, Acoma and Laguna. The rate of participation by Native Americans on such issues is less than one third of the participation rate among non-Native Americans. There is a need for polling places staffed with trained translators conveniently situated for the Native American population.

at pages 5-7.

The remedy for this unlawful disparity is complicated by the facts that (1) the Navajo and Pueblo languages are oral, not written, and (2) there are no equivalent terms in the Navajo and Pueblo languages for many words and phrases in the election process.

Native American polling place workers in reservation precincts faced a more difficult task than white poll workers in getting to the training session for poll workers that were held many miles away in county seats where most white people lived. At the training sessions Native American poll workers were given little or no instruction about how to translate ballots and propositions, and many of their attempts to do so on election day resulted in the most rudimentary references. For example, poll workers assisting voters at the polls would refer to the office of secretary of state as someone who works in

the state capitol, and bond levies for education were said simply to be increases in taxes. Many times the Native American poll workers found it so difficult to figure out how to explain items on the ballot they just instructed the voters to skip the offices or propositions. Moreover, Native American voters who had been purged from the voter rolls because they failed to respond to written notices they either did not receive<sup>13</sup> or did not understand, were turned away from the polls with no explanation of why they were not able to vote, and were given no opportunity to re-register there.<sup>14</sup>

**Pre-election investigation can pinpoint where federal observers should be assigned.**

The task of assuring compliance by polling place workers with appropriate polling place procedures requires (1) knowledge of what is happening in the polling places, and (2) the authority to correct actions that are in violation of the prescribed procedures. For over 35 years DOJ has been determining, before each election, what will happen in specific polling places in particular counties in states far from Washington, D.C. Based on this information DOJ determined at which polling places discriminatory activity would take place, and the exact number of federal observers needed at each particular polling place, from among the hundreds of counties in the 16 states that are fully or partially covered under Section 4 of the Voting Rights Act,<sup>15</sup> and the 10 additional jurisdictions in other states that have been and remain certified by courts under Section 3 of the Act.<sup>16</sup>

This DOJ effort, known as a pre-election survey, is conducted by the Voting Section of DOJ's Civil Rights Division. Pre-election surveys began right after the Voting Rights Act was enacted, as a tool for determining where and how many federal observers would need to be assigned under Section 8 of the Voting Rights Act. Through the years

<sup>13</sup> Residences on the Navajo reservation often are miles apart, with no paved roads, and many homes have no telephones. It is not unusual for reservation residents to pick up their mail periodically at a store or other place far from their homes.

<sup>14</sup> Voters were confused because they voted in tribal elections without problem, and were not told, for example, that under state law they had been purged from the county voter rolls because they did not vote with some particular frequency and in particular elections, such as every two or four years in general elections. To add to the confusion, in many areas the tribal elections and the state elections were held on different dates but at the same locations. Prior to the National Voter Registration Act, 42 U.S.C. § 1973gg et seq., voter registration in many counties in Indian country was conducted in the county seat, far from reservation housing, until, in some instances, litigation required that deputy registrars be made available at reservation sites, and that voter purge procedures be modified to allow fair notice to Native American voters. *United States v. State of Arizona*, CIV 88-1989 PHX EHC (D. Ariz., May 22, 1989), pgs. 6-11; First Amended Consent Decree, Jan. 3, 1994, pgs. 5-10.

<sup>15</sup> Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina and Texas are fully covered under the Voting Rights Act's special provisions by the formula in Section 4 of the Act, 42 U.S.C. § 1973b. One or more counties are specially covered under Section 4 in California, Florida, Michigan, New Hampshire, New York, North Carolina, South Dakota and Virginia. All jurisdictions covered under Section 4 of the Act are listed in the Appendix to 28 CFR Part 55.

<sup>16</sup> Certification under Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a), is for a particular term as defined by the court. Certification by the U.S. Attorney General under Section 6 of the Voting Rights Act, 42 U.S.C. § 1973f, is for an unlimited time. Jurisdictions certified under Section 6 can seek to have their certification terminated under Section 13 of the Voting Rights Act, 42 U.S.C. § 1973k. Appendix D is a list of the jurisdictions that have been certified for examiners by court order under Section 3(a) of the Act.

the pre-election surveys have remained relatively unchanged for determining where racially discriminatory actions (as contrasted with language-based difficulties) would occur in the polling places of the Deep South. This process is instructive on a broad level because it can be used, with variations, by states throughout the country to determine, prior to election day, where problems will occur on election day in polling places across the state.

The DOJ focus during the pre-election surveys is to find circumstances that are likely to lead to actions that will disadvantage voters in the polls on election day. To allow black voters to vote without interference in the South, the Voting Section focuses on counties where black candidates are facing white candidates. Those are the circumstances where experience has shown that polling place workers are more apt to take actions that deprive African American of their right to vote. Moreover, the inclination of polling place workers to take discriminatory action against African American voters is more likely when the black candidates have a real chance of beating white opponents. (For concerns about other kinds of problems at the polls, the pre-election survey would focus on the facts and antipathies relating to those problems.)

The surveys consist of two rounds of telephone calls and a field investigation. The first round of phone calls begins about six weeks before the election, which is a time when candidate qualifying has been completed and campaigning has been in progress. The Voting Section contacts the election director in each county where the minority population is about 20% or more, since a relatively small but concentrated portion of a county's population can be a significant proportion of a single election district in a county. The Voting Section determines a number of facts from each county election official they contact, including the name and race of the candidates, the office each is contesting, which candidates are incumbents, the county's procedures for appointing polling place workers, and the county's procedures for responding to problems that arise on election day. The second round of telephone calls is made to at least two African American people in each county who are familiar with the way elections have been conducted in the county during recent elections, who know who the candidates are and how the candidates have been conducting their campaigns, and who are knowledgeable about relationships between the races in the county and whether there have been any recent racial incidents in the county.

Voting Section attorneys then travel to the counties where the facts from the two rounds of telephone calls indicate that the assignment of federal observers is needed because poll workers will make it difficult for black voters to cast their ballots for the candidates of their choice. The attorneys interview the county election officials, the county sheriff (or chief of police, if a city election is in issue), African American county residents, including people associated with community and civil rights organizations, and candidates. The attorneys relay their information and their recommendation as to whether federal observers should be assigned for the election, and, if so, number and placement of federal observers that will be needed on election day, to a Voting Section

supervisor who coordinates the survey.<sup>17</sup> The polling places that are selected for the assignment of observers are (1) those at which the facts show that African American voters are likely to be victimized on election day, where (2) the county has no effective way to either know what is happening in the polls, or for responding to problems that occur at the polls, or both.

During the pre-election surveys the Voting Section supervising attorney talks frequently with the Voting Rights Coordinator at the Office of Personnel Management (OPM) who recruits and supervises the people who serve as observers.<sup>18</sup> Thus, OPM is aware of the identity of the counties that are the subject of field investigations, and of the recommendations of the attorneys for the assignment, numbers and poll location of federal observers. Because of the ongoing coordination between the Voting Section and OPM, the federal observers are chosen and are ready to depart for their assigned location the moment a final decision is made by the Assistant Attorney General for Civil Rights as to the numbers and placement of the observers.<sup>19</sup>

**Information from federal observers is obtained quickly and effectively on election day.**

The pre-election process not only gives DOJ information it needs to determine where and how many federal observers will be needed on election day, it puts DOJ lawyers in contact with county election officials before the election, and the DOJ lawyers inform the county officials of the problems that DOJ has found out may occur in the county's polls on election day. This contact continues during the election, as the DOJ lawyers provide the county election officials with information the lawyers get from the observers.

<sup>17</sup> The Voting Section is headed by a chief and four deputy chiefs. There also are special counsels who are senior attorneys assigned to perform particular duties. The pre-election work for a particular jurisdiction is overseen by a deputy chief if the jurisdiction is a defendant in recent litigation. Otherwise, the pre-election supervision is handled by the special litigation counsel for elections.

<sup>18</sup> Federal observers are assigned and supervised by the Office of Personnel Management. See 42 U.S.C. § 1973f. OPM centralized the observer program in the OPM office in Atlanta, Georgia, over the past several years. Beginning in 2002 the program will be centralized in the OPM office in Denver, Colorado.

There is no standing group of people who are federal observers. Rather, the people chosen to serve as federal observers at a particular election are volunteers, usually from among the OPM nationwide staff except when special abilities are required, such as Native American language ability. General training sessions are held for observers and observer supervisors at selected sites during the year. Often people will volunteer to serve as observers in election after election, but they are not always available because of the demands of their regular work assignments and prior obligations. Because of the need to recruit observers for each election, and the logistical requirements of transportation (airplane tickets, rental car) and lodging, the OPM coordinator and the Voting Section supervising attorney are in contact throughout the year to discuss observer needs in upcoming elections.

<sup>19</sup> If a county for which federal observers is recommended has not been certified yet for federal examiners, a separate recommendation for certification of the county is made to the U.S. Attorney General, and a certification form is prepared for the U.S. Attorney General's signature. Also, because certifications are effective upon publication in the Federal Register, 42 U.S.C. § 1973b(b), arrangements are made for publication as soon as possible after the U.S. Attorney General signs the certification. Similar arrangements are made by OPM which must publish in the Federal Register a location for an examiner's office. 42 U.S.C. § 1973e(a).

The observers are briefed by DOJ attorneys and the observer captain on the day before the election. The observers get to their assigned polling place one-half hour before the poll opens, and usually will remain until the last person leaves the poll. They have pre-printed forms on which to record the activity in the polls. Observers usually also attend the ballot count and record the number of votes received by each candidate.

During election day an observer supervisor makes repeated visits to the polling places where federal observers are stationed, and remains in constant telephone contact with the DOJ attorney who is in the county. This gives the DOJ attorney in the county a constant flow of information throughout the day about activities that transpire inside the polls.<sup>20</sup> When the federal observers inform the DOJ attorney of actions of polling place officials that the attorney concludes are interfering with the voting rights of African Americans, the DOJ attorney gives the facts to the local official in charge of the election, which allows him or her to stop the discriminatory activity. Local officials also can use this information after the election to take steps to prevent the incidents from happening again.

Similar steps are taken on election day when federal observers are used to determine compliance with the language minority provisions of the Voting Rights Act, but normally the pre-election preparation is different. The inability or lack of desire of poll workers to provide information to non-English speaking voters usually does not depend on the identity of the candidates or the issues involved in a particular election. Thus, the information obtained in one election will allow a determination of whether federal observers will be needed in the next election.<sup>21</sup>

The reports of these federal observers have their primary emphasis on the language aspects of polling place procedures and the actions of polling place workers. (The federal observers assigned to a particular polling place speak the minority language that is used by the voters at that polling place.) It usually is not important that the observers arrive at the opening of the polls, nor that they stay all day, since the goal is to have the observers attend the polls for a sufficient length of time to witness a number of minority language voters go through the voting process. This will give the observers sufficient facts to allow the DOJ attorneys to analyze the county's compliance with the law.

We should emphasize that the federal observers do not interfere with the election process. Their limited function, to pass along information to their OPM supervisors and

---

<sup>20</sup> In addition, the DOJ attorney in each county calls the supervising attorney often during the day: when the polls open, and every hour after that until it is clear that correct procedures are being followed at the polls in that county, unless continuing problems and their resolution make it necessary to continue frequent contact. This coordination between the supervising attorney and the attorney in the field begins on the day before the election, and does not end until the attorney leaves the county to return to Washington, D.C., on the day after the election or later.

<sup>21</sup> Initial facts indicating possible violations of the Voting Rights Act most often come to DOJ through complaints by telephone, by mail, or in conversation with DOJ attorneys, paralegals and analysts in the performance of their routine duties.

the DOJ attorneys, is in accord with the dictates of Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f. The observers must not give instructions to poll workers, must not give help to voters, and must not share their observations, judgments or opinions with individuals in the polls. They are eyes and ears. They are paid witnesses.<sup>22</sup>

**The federal observers' reports allow Justice Department attorneys to require counties to comply with their states' rules.**

In its enforcement of all federal civil rights laws the Department of Justice (DOJ) attempts to obtain voluntary compliance from prospective defendants. This has been especially true of the enforcement of the Voting Rights Act where the prospective defendants are officials of state and local governments.

From the beginning of DOJ's enforcement of the Voting Rights Act DOJ lawyers personally conducted investigations in each county before examiners or observers were assigned, regularly checked on the progress of examiners while voter registration was conducted, and on election day a DOJ attorney was and continues to be present in each county to which federal observers are assigned to obtain information from the observers during election day, and debrief the observers immediately after the election. During their presence in the counties the DOJ lawyers have continuing contact with county officials, and give them the information the lawyers gain as part of their pre-election investigation in the county, and from the federal observers. Those local officials, faced with the immediate and continuing presence of DOJ lawyers, usually instruct the head worker at the polling place to follow the appropriate procedures.

The federal observers inside the polling place witness the cessation of the discriminatory action, or if the discriminatory action continues, the DOJ lawyer again brings the information from the observers to the attention of the county election official to get further corrective action. Thus, federal observers function both to gather evidence of discriminatory activities in the polling place for future legal action, and for the elimination of discriminatory actions on the spot. At times, the mere presence of federal observers at the polls serves to inhibit the tendency of many polling place workers to take discriminatory action against African American voters.

**Court-ordered remedies require counties to do their job in the South.**

Some compulsive action is needed when county election administrators do not address outstanding problems in the polls, and do not follow proper election day procedures. A primary reason for the mistreatment of African American voters was and

<sup>22</sup> It is of utmost importance that observers stick to their role at the polls, because they are able to be in the polling places only by the authority of Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f. States have laws about who can enter the polls. Usually those individuals include poll workers, voters, voters' assistants, peace officers when called, and candidates' or political parties' poll watchers. Others will be inside the polls in violation of law unless specifically authorized to be there by the appropriate local election official. Moreover, under Section 8 of the Voting Rights Act the federal observers are able to be in the polls only to perform the tasks noted above.

continues to be the failure of local election officials to appoint African Americans as polling place workers. The evidence of mistreatment that this discriminatory policy had on African American voters has provided a firm basis for court orders that required the defendants to take specific steps to recruit and hire African Americans to work in the polls. One good example of this result is the consent decree in *United States v. Conecuh County, Alabama*, supra, which required the defendant political party executive committees (responsible for nominating people to serve as poll workers) to “engage in affirmative recruitment efforts aimed at ensuring that the pool of persons from which nominations are made fully reflects the availability of all qualified persons in Conecuh County who are interested in serving as election officials, without regard to their race or color.” at pp. 3-4.

Those recruitment efforts were required to include encouraging candidates to “seek out and propose for nomination black citizens,” and “sending notices to local organizations comprised predominantly of black citizens... to advise them that the party intends to nominate persons to serve as election officials and encourage them to have interested persons notify the chairperson of the respective political party executive committee of their willingness to serve as election officials,” at p. 4.

A 1993 consent order in *United States v. Johnson County, Georgia*, CV393-45 (S.D. Ga, Sept 14, 1993) stated that,

1. According to the 1990 Census, the total population in Johnson County is 34 percent black and the total voting age population is 29.2 percent black.

\* \* \* \* \*

7. Of the one hundred thirty one individuals who were employed by Johnson County to serve as poll officials between 1988 and August 1992, eighteen (14%) were black. There were no black poll workers during this period at seven of the twelve polling places.

8. Only eight (12%) of the Sixty-six poll officials employed by Johnson County for the July 21, 1992 primary election were black. There were no black poll workers at eight of the twelve polling places.

9. Of the one hundred and six poll officials employed by Johnson County for the November 3, 1992 general election, only sixteen (15%) were black. There were no black poll workers at six of the twelve polling places.

10. No black person has ever served as a managing poll officer or an assistant managing poll officer at any of the county’s polling places.

At pages 2-3.

Included in the *Johnson County* consent decree among the steps the defendant county commission and supervisor of election must take to have African Americans fairly represented among the polling place workers are, “sending written notices to local organizations comprised predominantly of black citizens ... to advise them that the county

intends to appoint black persons to serve as poll workers and poll managers,” and “contacting black candidates and members of the political parties...to ascertain the names, addresses and telephone numbers of black citizens who are qualified and available to serve as poll officers.” *Id.* at 6. In addition, the defendants must publicize in local newspapers, on radio, on television and on posters their policy of conducting elections free of racial discrimination. They also must train the poll workers on how to perform their duties in a racially nondiscriminatory manner, and, with specificity, on how to deal with voters who need assistance.

Even with the specific steps set out in the 15 page *Johnson County* consent decree, the reports of federal observers showed that African American citizens of the Johnson County were continuing to be excluded from among the ranks of those appointed to work at the polls because the supervisor of elections did not adhere to the terms of the decree. After further discussions between the county and DOJ, in lieu of DOJ pursuing contempt of court proceedings the county appointed a biracial committee formed of county residents to perform the preliminary poll worker recruitment and nomination functions previously performed by the election supervisor, leaving her with her statutory duty of formally appointing the poll workers. (This change in practice was reviewed and precleared under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.) As a result, African Americans were fairly appointed among those who worked at the polls, and discrimination against African American voters at the polls abated in Johnson County, Georgia.

Both the *Conecuh County* and *Johnson County* cases show how information gathered by observers can serve as the evidentiary basis for litigation, how particular individuals at the county level can persist in discriminatory procedures in spite of state law and federal litigation, and how the identity and training of the people working inside the polling places is of primary importance in eliminating injustice from the polls. It should be remembered that in both instances the DOJ lawyers first shared their information with state and local election officials in an attempt to allow those officials to eliminate the discriminatory treatment of voters. These efforts provided the election officials with something they could obtain by themselves, but did not: information about what went wrong in their polls. The need for the resulting litigation demonstrated that those officials were not willing to stop the discriminatory conduct.

**Court-ordered remedies require counties to do their jobs for language minorities.**

Even after the Voting Rights Act was amended in 1975 to require that areas designated under a formula must provide information and ballots in languages other than English, inadequate training of polling place workers continued to disadvantage minority language voters. The reports of federal observers gave the attorneys from the Department of Justice the information they needed to prove to county officials that violations of the Voting Rights Act had occurred, and to obtain consent decrees that set out specific steps that the counties would take to effectively provide and translate election information to Native American citizens.

Most of the consent decrees to cure discriminatory actions in Indian country under the language minority provisions of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, were lengthy and set out in detail the procedures that election officials had to follow for voter education, voter registration, translation and balloting.<sup>23</sup> It is significant that the great majority of the provisions in the consent decrees focused on the counties' administrative responsibilities, including hiring additional county personnel, to try to give Native American voters equivalent access to information about an election and voting procedures as white people got as a matter of course, since all information was provided in English and in areas near the county seats.

Thus, the Stipulation and Order in *United States v. Cibola County, New Mexico*, No. Civ 93 1134 LH/LFG, (D.N.M., Apr. 21, 1994) (three-judge court), is 44 pages long, 33 pages of which is a Native American Election Information Program. This program provides that, "Cibola County shall employ at least three Native American Voting Rights Coordinators who will coordinate the Native American Election Information Program in Cibola County..." These coordinators have to be bilingual in either Navajo or Keres and English, they are to be hired only after the county consults with the tribes, they are to be trained in all aspects of the election process, they are to attend and make presentations at chapter and tribal council meetings, and perform numerous, specifically described functions that would provide election information to the Native American citizens of Cibola County.

It was and remains difficult, however, to compel obdurate county clerks and other county election administrators to perform the myriad election-connected functions in a way that meets the requirements of the court orders.<sup>24</sup> These cases argue persuasively for continuing the practice of seeking lengthy, detailed court orders that can be enforced through contempt proceedings.

<sup>23</sup> For example, the Consent Agreement is 36 pages long in *United States v. Socorro County, New Mexico*, Civil Action No. 93-1244-JP (D.N.M. Apr. 13, 1994) (three-judge court); in *United States v. State of New Mexico and Sandoval County, New Mexico*, Civil Action 88-1457-SC (D.N.M. Mar. 28, 1990) (three-judge court), is 12 pages long, and the accompanying Native American Election Information Program filed on April 30, 1990, is 24 pages long; the First Amended Settlement and Order in *United States v. San Juan County, Utah*, Civil Action No. C-83-1287 (D. Utah, Aug. 24, 1990) (three-judge court), is 21 pages; the First Amended Consent Decree and Order in *United States v. McKinley County, New Mexico*, Civil Action No. 86-0028-M (D.N.M., Jul. 20, 1990) (three-judge court), is 23 pages; and the Consent Decree in *United States v. State of Arizona*, CIV 88-1989 PHX EHC (D. Ariz. May 22, 1989), affecting Apache and Navajo Counties, is 24 pages, while the First Amended Consent Decree in that case (Jan. 3, 1994) is 28 pages long.

<sup>24</sup> A letter of understanding was developed between DOJ and San Juan County, New Mexico, which required the county to adopt a manual of procedures to comply with the language minority requirements of the Voting Rights Act. The manual would become final after review and concurrence by DOJ. Changes in the procedures would become effective upon the concurrence of DOJ. Letters of understanding have not been widely used by DOJ in its Voting Rights Act enforcement. The letters have the advantage of getting a fast remedy and avoiding the uncertainties of litigation. The main disadvantage of using a letter of understanding is the inability to seek contempt of court sanctions if the county does not follow the steps in the letter or the county's manual of procedures. If the actions that the county fails to take are significant, a legal action would need to be filed at that time, prolonging the time for obtaining a remedy.

An alternative approach was taken in a consent decree between DOJ and Bernalillo County, New Mexico, where the court order was accompanied by a manual of procedures to comply with the language minority requirements of the Voting Rights Act. *United States v. Bernalillo County, New Mexico*, CV-98-156 BB/LCS (D.N.M. Apr 27, 1998). The consent decree required that the county hire a native language coordinator who is bilingual in Navajo and English, and specifically noted that, "The primary responsibility of the [native language coordinator], a full-time employee of Bernalillo County, shall be to carry out the county's Navajo language election procedures, publicity and assistance, including assisting the county to carry out the procedures in the manual..." at p. 4. The consent decree also required the county to establish a travel, supply, and telephone call budget for the native language coordinator, and subjected the county to the preclearance provision in Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c), which allows the county to make changes in the manual and for DOJ to review those changes to determine that they are nondiscriminatory before they can be implemented. This approach has the benefit of allowing the county to tailor its administrative procedures to its particular personnel and office situation, and of allowing practical changes to be made in the administrative procedures when necessary without having to request the three-judge court for an amendment to the court order.

**Conclusion.**

The federal observer provision of the Voting Rights Act continues to be extraordinarily effective in allowing the United States Department of Justice to enforce the Voting Rights Act. That provision should be extended.

The federal examiner provisions of the Voting Rights Act have accomplished their goal of allowing African American voter access to the voter rolls in areas where official resistance kept them from becoming registered voters. Those provisions have done their job and should be eliminated, especially insofar as they are prerequisites for the assignment of federal observers.

The federal observer provision of the Voting Rights Act performs an effective law enforcement function as it is written and applied. That provision should not be altered.

## APPENDIX A

NUMBER OF PERSONS LISTED BY FEDERAL EXAMINERS  
UNDER SECTION 7 OF THE VOTING RIGHTS ACT, 42 U.S.C. 1973e  
1965 - 2000<sup>25</sup>

<u>State</u>	<u>Total People Listed</u>	<u>Non-white People Listed</u>	<u>White People Listed</u>
Alabama <sup>26</sup>	66,539	61,239	5,300
Georgia <sup>27</sup>	3,557	3,541	16
Louisiana <sup>28</sup>	26,978	25,136	1,842
Mississippi <sup>29</sup>	70,448	67,685	2,763
South Carolina <sup>30</sup>	<u>4,654</u>	<u>4,638</u>	<u>16</u>
Total	172,176	162,239	9,937

<sup>25</sup> This information is extracted from the Semiannual Report of Cumulative Totals on Voting Rights Examining as of December 31, 2000. Prepared by the Office of Workforce Information, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, Washington, D.C. 20415.

<sup>26</sup> People were listed in Autauga, Dallas, Elmore, Greene, Hale, Jefferson, Lowndes, Marengo, Montgomery, Perry, Sumter and Wilcox Counties.

<sup>27</sup> People were listed in Bullock, Lee, Screven and Terrell Counties.

<sup>28</sup> People were listed in Bossier, Caddo, DeSoto, East Carroll, East Feliciana, Madison, Ouachita, Plaquemines and West Feliciana Parishes.

<sup>29</sup> People were listed in Amite, Benton, Bolivar, Carroll, Claiborne, Clay, Coahoma, DeSoto, Forrest, Franklin, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jasper, Jefferson, Jefferson Davis, Jones, LeFlore, Madison, Marshall, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Quitman, Rankin, Sharkey, Simpson, Sunflower, Tallahatchie, Walthall, Warren, Wilkenson and Winston Counties.

<sup>30</sup> People were listed in Clarendon and Dorchester Counties.

APPENDIX B

ASSIGNMENT OF FEDERAL OBSERVERS  
 UNDER SECTION 8 OF THE VOTING RIGHTS ACT, 42 U.S.C. 1973f  
 BY YEAR AND STATE, 1966 - 2000<sup>31</sup>

Year	AL	GA	LA	MS	NC	SC	AZ	CA	IL	MI	NJ	NM	NV	NY	TX	UT	WI	TOTAL
1966	823	22	397	470		158												1,870
1967			215	1,108														1,323
1968	252	138	125	507		152												1,174
1969	44		20	325														389
1970	403	6	16	126		19												570
1971			54	960														1,014
1972	140	44	60	146		105												495
1973																		0
1974	234	64	56	100														454
1975		11	116	1,252														1,379
1976	181	67	33	132											193			606
1977				89														89
1978	598	4		31		67		146					3		90		6	945
1979			130	1,212				140										1,482
1980	272	156	12	274											19			733
1981				72														72
1982	973	58	23	37														1,091
1983	187		3	1,288														1,478
1984	260	137		439	70	158									10			1,074
1985		19		152		7								107				285

<sup>31</sup> This information is extracted from the summary of federal observer activity by calendar year, United States Department of Justice, Civil Rights Division, Voting Section. Southern states are listed first in this chart because federal observers were assigned only to Southern states for the first years shown.

012360

012361

Year	AL	GA	LA	MS	NC	SC	AZ	CA	IL	MI	NJ	NM	NV	NY	TX	UT	WI	
1986	149	15		155			40					65						424
1987	51			490								12			15			568
1988	127	65		124	39	45	150					89			31	23		693
1989	13			13								22		132				180
1990	61	72			36	67	145					72				25		478
1991		12		345		40	3					38		19				457
1992	53	151		23			181					87		17	5	13		530
1993	11	84		124		20	25					36		230				530
1994	95	18	11	35	45		109					147		55		18		533
1995			19	104								29						152
1996	39	76		121		72	108	39				89		36	24	17		621
1997	5			174				7				5		28				219
1998	29	6					109	20				129		12		19		324
1999		5	56	342							50	6						459
2000	44	42	8	24			105	23	68	128	140			23	16	19		640
TOTAL	5,044	1,272	1,354	10,794	190	2,046	975	375	0	68	178	966	3	659	403	134	6	23,331

## APPENDIX C

EXCERPTS FROM PLAINTIFF'S RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, *United States v. Conecuh County, Alabama*, Civil Action No. 83-1201-H (S.D. Ala., Jun 12, 1984).

A white voter waiting in line to vote stated to white poll official John P. Bewley that she was unable to obtain a yellow sample ballot distributed by the Alabama Democratic Conference. The black voter standing next in line had such a ballot. Mr. Bewley stated, "You ain't [sic] of the right color." During the same day, Mr. Bewley stated to federal observer Riddle, "See, the niggers bring in these yellow marked ballots. The nigger preachers run the niggers down here, you know. They tell them how to vote. I don't think that's right."

P. 7.

Poll officials instructed white registered voters to confirm their registration status in the office of the Probate Judge. Black voters whose names were not on the list were in each instance simply told that they could not vote, and were given no instruction by poll officials. White voter Salter's name did not appear on the list, and Ms. Salter acknowledged that she resided in a rural precinct and not in box 11-1. Ms. Salter nevertheless was allowed to vote an unchallenged ballot directly on the machine.

Pp. 8-9.

Ms. Lewis, who required assistance because of a vision problem, signed the poll list and stated that she wished for her companion (unidentified) to provide assistance in voting for her. White poll official Windham stated, "Can't nobody go in there with you." After a pause, Mr. Windham stated to Ms. Lewis, "you can fill out an affidavit and then she can go in with you. Can't you [read]?" Mr. Windham's tone and manner were sufficiently abrasive that Ms. Lewis left the voting place. Some moments later she was observed to remark to a companion, who was trying to persuade her to make another attempt to vote, "I've done had trouble with them twice before and I'm not begging them any more. I'm not scared but I'm not begging anybody." Ms. Lewis returned accompanied by Mr. Richard Rabb, at that time the Chair of the Conecuh county Branch of the Alabama Democratic Conference. Ms. Lewis was allowed to vote, and the poll officials provided necessary assistance with the affidavit. Ms. Lewis remind very upset and remarked, "Why couldn't they have let me vote to begin with?"

Pp. 16-17.

Black voters at box 9-1 (Old Town) were told throughout the day of the October 12, 1982 special run-off election, that no more than two voters were allowed in

the polling place at one time. This restriction was imposed on 30-35 occasions. In no instance were white voters required to conform to this procedure, and the poll officials allowed a many as five white voters in the polling place at a time.

P. 21.

Ms. Stacey enforced the limitation on the amount of time a voter could spend in the booth in a random and discriminatory fashion. She enforced the limitation against black voters more frequently than against white voters. During the last hour of voting the requirement was applied exclusively against black persons. On at least two occasions she told black voters that their time had elapsed when, in fact, it had not.

P. 24

During the course of the day, poll officials addressed all black voters by their first names. Older white voters were addressed by the courtesy titles of Mr. and Ms.

P. 35

White poll official James Ellis initiated new procedures for assistance of black voters. Without notice to any person, Mr. Ellis required assistors accompanying voters into the polling place to remain 30 feet outside the polls until Mr. Ellis had finished interviewing the voter and summoned the assistor.

Pp. 36-37.

Poll officials who assisted black voters did not read the ballot to the voters or otherwise advice the voters of the contests and the candidates. They simply asked the voters, "Who do you want to vote for?"

\* \* \* \* \*

Poll official Lois Stacey marked the ballot for a voter she was assisting in contests in which the voter did not express a preference.

\* \* \* \* \*

Poll officials frequently served as assistors without asking voters receiving assistance who they wanted to assist them. On a number of occasions, poll officials serving as assistors did not read the complete ballot to the voters.

P.40

## APPENDIX D

JURISDICTIONS CERTIFIED FOR FEDERAL EXAMINERS  
 UNDER SECTION 3(A) OF THE VOTING RIGHTS ACT AS OF 2000<sup>32</sup>

<u>State</u>	<u>Jurisdiction</u>	<u>Term of certification</u>
Illinois	Town of Cicero	October 23, 2000 order, effective until December 31, 2005
Louisiana	St. Landry Parish	December 5, 1979 order, effective until further order of the court
Michigan	City of Hamtramck	August 7, 2000 order, effective until December 31, 2003
New Jersey	Passaic County	June 2, 1999 order, effective until December 31, 2003
New Mexico	Bernalillo County	April 27, 1998 order, effective until June 30, 2003
	Cibola County	April 21, 1994 order, effective until April 21, 2004 (originally certified by December 17, 1984 order)
	Sandoval County	September 9, 1994 order, effective until at least September 9, 2004 (originally certified by December 17, 1984 order)
	Socorro County	April 11, 1994 order, effective until April 11, 2004
Utah	San Juan County	December 31, 1998 order, effective until December 31, 2002 (originally certified by January 11, 1984 order)

<sup>32</sup> Information obtained from *Jurisdictions Currently Eligible for Federal Observers as a Result of Orders Under Section 3(a) of the Voting Rights Act*, United States Department of Justice, Civil Rights Division, Voting Section, October 22, 2001.

Mr. CHABOT. Okay. Thank you. The gentleman's time has expired.

The panel up here is bound by the same rule as the witness panel is, and it's a 5 minute rule, so we will each have 5 minutes to ask questions at this time, and the Chair recognizes himself for that purpose.

And the question I'm going to ask—I'll just go down the line and let each of you deal with it.

And some of you have already touched on this in your testimonies obviously, but much of what we're doing is setting a record here, and so some repeating I think is probably good. It's been suggested in some of the written testimonies that the Federal Examiner Program may no longer be necessary.

Mr. Weinberg's written testimony further suggested that Congress should amend section 8 to make certification for the deployment of Federal observers independent of Federal examiners. Would each of you comment on the Federal Examiner and Observer Program and why the assistance of Federal observers is still necessary or not.

Ms. Randa?

Ms. RANDA. Thank you, Mr. Chairman. We play—we at OPM play a very limited support role to the Department of Justice in this program, and I have testified to the fact that the role of Examiner has evolved over the years and changed. But beyond that, I would think we would defer to the Department of Justice to make any decisions about exactly what changes should be made in the future.

Mr. CHABOT. Okay. Thank you. Ms. Pew?

Ms. PEW. I can speak to the Federal Observer Program and believe that it is well worth the time spent. It is my—those are my eyes and ears inside the polling places. I have very limited examiner contact. But I can speak to the Federal Observer Program; that it has been absolutely phenomenal. It's been a great boon in our county.

Mr. CHABOT. Thank you. Mr. Weinberg?

Mr. WEINBERG. Thank you. I mean I think Ms. Pew's response is somewhat indicative. She's been intimately involved as a county election official with the results of the work of the Federal observers, and has no knowledge of what the Federal examiners do.

And I think that's not her fault. It's because the Federal examiners just don't do much anymore. I think OPM, if we were being candid in the back room, would say they have to maintain all these lists of federally registered voters. They have to keep them current, keep the addresses up. Mostly now, they're removing people's names from those lists of federally registered voters, because they're dying.

Yet, the counties can't take those voters off their voting rolls without an okay from the Office of Personnel Management. I mean I think to some extent it is now getting—what were protections are now getting in the way of several functions, and I think they're not needed.

As far as the certification, and you know I think observers are important. As far as how to get them into a county the first time, I do think a certification procedure is important. I think it assures

everyone that there is a need for this law enforcement function to go on.

But as it stands now, the Attorney General has to personally sign the certifications. I think that's unnecessary. I think that function could be delegated to the Assistant Attorney General, much the same way as the Assistant Attorney General has authority delegated to object to voting changes under section 5 of the act, and I think that it could go on as a provision on its own.

I think it should.

Mr. CHABOT. Thank you. And my second question, Mr. Weinberg and Ms. Randa, if you want to comment on it, you could as well.

How does the Department of Justice determine whether Federal observers are necessary?

Mr. WEINBERG. There's sort of two tracks on that. And, you know, I must qualify everything I say by saying I haven't been at the Justice Department for almost 6 years. I don't know what's changed and what's not. I doubt that it has changed very much.

One track is where there's an investigation before the election that starts 6 weeks before an election, and is described in some detail in my extended remarks. It's an investigation. It starts out with telephone calls to local officials, to minorities who are knowledgeable in the area about election matters and devolves down to field investigation by attorneys who relay information up to a central person in the Voting Section of the Civil Rights Division, who then combines the information; is talking with OPM; puts together a memorandum setting out the facts for each site, and recommending how many observers are needed.

So it's a very intensive, a very detailed law enforcement investigation. That's how it usually works in Southern areas. Where the concern is with language minority provisions of the Voting Rights Act, it's a little bit different. There still is an investigation, but because the problems involved with violations of the Language Minority provisions of the Voting Rights Act usually are systemic and do not depend on any particular election contest in a city, county, or school district—

Mr. CHABOT. Do you do that before each election?

Mr. WEINBERG. Yes.

Mr. CHABOT. Okay. Thank you.

Mr. WEINBERG. In the specially covered areas.

Mr. CHABOT. Okay.

Mr. WEINBERG. Yes.

Mr. CHABOT. Thank you. You can continue.

Mr. WEINBERG. Because of the language violations of the Language Minority provisions usually are more systemic, an initial investigation is what's needed. Usually, these days, there's litigation that results and a court certifies the county. So you have everything you would have leading up to litigation, which is a lot of work and a very intensive effort.

After that, the first election, however, the observers could be assigned again and again without repeated investigations. It's the information really one gets out of the polling places for the language minority coverage that would recommend going or not going again to the next election.

Mr. CHABOT. Okay. Thank you very much. My time has expired, but, Ms. Randa, is there anything that you want to—

Ms. RANDA. I would just confirm what Mr. Weinberg said that our involvement is to coordinate on the number sent to each polling site.

Mr. CHABOT. Okay. Thank you very much. My time has expired.

The Ranking Member of the overall Committee, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thank you, Chairman Chabot.

Three considerations. I start with Mr. Weinberg. There's been only one certification by the Attorney General to section 6, Titus County, Texas. Does that mean a lot are coming through the courts under section 3 or does it mean there need to be a lot more?

My second consideration—and I'll go over these again—is this linkage between certification of observers and its validity.

And then finally, I had one of the witnesses tell me that Federal observers are kept out of the polls by State law, so it's frequently hard for them to see anything that's happening. It's hard to be an observer if you can't get into the polls under State law.

Can you help put some of these things into context?

Mr. WEINBERG. I can help with some of them I think.

Taking the last one first, State law would keep most people out of the polling places, but Federal observers get to in the polling places because the Voting Rights Act lets them. It's the authorization of the Voting Rights Act that lets Federal observers in. Otherwise, the Federal observers are like people off the street, and just can't walk into a polling place on Election Day.

As far as the certifications go, as I haven't been involved in that, I don't know. I went onto the Justice Department website a couple days ago to see if I could tell what's been going on in the last few years, and there have been a lot of court certifications it looks like as a result of litigation under the Language Minority provisions of the Voting Rights Act. And observers are being assigned to watch elections in those areas.

I don't know why there have been few, if any, certifications by the Attorney General of counties.

Mr. CONYERS. Well, from everything I've been hearing, you know we've got piles of complaints that come in. Unless all of them are invalid, I mean this doesn't add up, Mr. Weinberg.

Let me put it like this: Are attorneys who are Federal observers precluded from coming into the voting booths?

Mr. WEINBERG. The Justice Department attorneys in most States would be precluded from going into the polling places because they're neither registered voters there nor polling place officials.

The Federal observers, however, can go into polling place where they're assigned—any county jurisdiction that's been certified.

Mr. CONYERS. Ms. Pew, do you or Ms. Randa, want to add anything to this discussion.

Ms. PEW. I will add that in Arizona, observers, with prior approval, are welcome into our polling places. We ask that they submit something in writing to me by the Friday prior to the election, so that I can send that to the poll workers.

Given that a lot of them are non-Native American, and then poses a threat. We did have an incident in 2000 that prompted

quite a chaotic sense in about 17 of our precincts, and, for that reason, we began a political protocol that is mandatory for our observers.

Mr. CONYERS. Could you get a little outdated considering the way the process is working now?

Ms. PEW. I can't respond to that, because in our county the Recorder's Office and the Elections Office are separate. The Recorder's Office maintains the voter rolls, as far as purging those, as Mr. Weinberg has spoken to, so I can't respond to that.

Mr. CHABOT. Ms. Randa?

Ms. RANDA. I wouldn't want to hazard a conclusion about whether it should or how it should change, but I will confirm what Mr. Weinberg said about there having been very little activity other than removing names from the list of registered voters. So that part of the role is what has evolved.

Mr. CONYERS. Thank you, all. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT OF VIRGINIA. Thank you. Thank you, Mr. Chairman.

Mr. Weinberg, let me ask you a little more specifically, just from a practical point of view, if a local civic organization suspects problems in a certain area, how do they get an observer into that area now, and how would you propose changing that mechanism?

Mr. WEINBERG. Getting in touch with the Justice Department about the need for Federal observers is the easiest thing on earth. All you need to do is call. A telephone call will do it.

In fact, the Justice Department attorneys rely very, very greatly on information and input from people who are in the counties, whether they are victims or witnesses or just concerned citizens.

We always were open to those kinds of contacts. If somebody has a particular problem in any county, we always encouraged to call us, let us know what the concern is, and we will investigate.

If the investigation reveals facts that show violations of the Voting Rights Act and need for observers, the observers will be sent.

Now, in Virginia, there are no certified counties, so that whole certification process we were talking about before, where there has to be an investigation, and then a recommendation to the Attorney General to sign a piece of—he actually signs a piece of paper that says I hereby certify, and then that's published in the Federal Register before Federal observers can be assigned.

Mr. SCOTT OF VIRGINIA. And that's the process now?

Mr. WEINBERG. Yes.

Mr. SCOTT OF VIRGINIA. And are you proposing any change to that process?

Mr. WEINBERG. Yes. I'm proposing that in my imagined the new process there would be an investigation and the Assistant Attorney General would agree to a recommendation and then sign a piece of paper that says that Federal observers would be needed to watch proceedings in the polling place in order to enforce the Voting Rights Act.

Mr. SCOTT OF VIRGINIA. Now, how long does that certification stay active?

Mr. WEINBERG. Now, it stays active forever. A jurisdiction can petition under section 13 of the Voting Rights Act to stop the Federal examiner appointment. I don't think anybody ever has.

Mr. SCOTT OF VIRGINIA. Do the observers have any specific qualifications?

Mr. WEINBERG. Observers, by and large, OPM, as I understand it tries to have observers be OPM personnel where that's possible; in some instances, where language minority voters are concerned, there may not be sufficient numbers of OPM personnel who speak that language, especially in Indian country. And so people from other agencies are taken in.

But the Federal observers are personnel who are trained. There are periodic trainings through the year, and then there are on-site trainings that are specific and briefings of the observer before the election.

Mr. SCOTT OF VIRGINIA. If you didn't have the observers, how would you investigate complaints?

Mr. WEINBERG. When I started in the Justice Department, I was law clerk in the summer of 1965. The Voting Rights Act passed in early August, but we still had many lawsuits that were pending. They were terribly cumbersome. They're very difficult to investigate. The records alone are very difficult to get, and I think the Court, in *South Carolina v. Katzenbach*, which found the Voting Rights Act special provisions constitutional, recognized how difficult it is to mount a standard garden variety lawsuit against violations of the Voting Rights Act.

So, absent the Federal observers, it would be terribly, terribly difficult.

Mr. SCOTT OF VIRGINIA. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. The gentleman's time has expired.

I'd ask unanimous consent that the gentleman be given one additional minute, if he would yield to me for a moment?

Would the gentleman from Virginia yield to me?

Mr. SCOTT OF VIRGINIA. Yes.

Mr. CHABOT. Okay. I just wanted to follow up with one question, Mr. Weinberg. What criteria would you envision for certification of observers?

Mr. WEINBERG. I think the criteria would be that there is evidence of probable violations of the Voting Rights Act. I mean I don't know that one needs much more.

The certification procedure now is just about that. It's—for examiners. It's not a detailed certification.

Mr. CHABOT. Okay.

Mr. WEINBERG. And I would think it shouldn't—certainly not be more detailed and possibly a little less. But it would be keyed to possible violations of the Voting Rights Act.

Mr. SCOTT OF VIRGINIA. Well, Mr. Chairman.

Mr. CHABOT. I yield back.

Mr. SCOTT OF VIRGINIA. Reclaiming my time, when do they certify it now?

Mr. WEINBERG. They certify—now the certification is it's necessary to enforce the 14th and 15th amendments.

Mr. CHABOT. If the gentleman would yield? Isn't it also or 20 written complaints?

Mr. WEINBERG. Yes. There's an alternative that if you get 20 written complaints. That, however, triggers the Attorney General's consideration. And so it all devolves pretty much to the same point, which is we in the Justice Department had to figure out that there were violations of the law that were probable and usually were happening and persuade the Attorney General of that.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, let me defer to Mr. Scott, if I can. I'm trying to see whether there are any things I need to question about.

Mr. CHABOT. Okay. All right. We'll just start from scratch here then, and yield to the gentleman from Georgia. Mr. Scott is recognized for 5 minutes, and then we'll come back to Mr. Watt.

Mr. SCOTT OF GEORGIA. Thank you, Mr. Chairman.

Mr. Weinberg, I wanted just start for a moment with your suggestion that we move away from the Federal examiners, because I—given your history, you were there at the beginning. You understand the whole make up and need for both examiners and observers. I'm not quite convinced, just from my own preliminary investigation of this that we may need to do away with examiners.

And your reason for saying we may need to modify or do away with the examiners was that the link doesn't exist. And I think your meaning of the link that I got was your quote was that there were no more hostile elected officials.

Can you elaborate on that, because there is still, in my estimation, hostile elected officials in various pockets of the South, and, a matter of fact, all across this nation. And if that is the link that you think doesn't exist, I am here to assure you that it does still exist.

I'm always of the opinion that we move with and err on the side of caution. In Georgia, for example, there are still 300,000 eligible African-Americans that are unregistered to vote, and time after time and case after case, we have documented hostility. Crosses are still being burned. In some of these areas, voters are being intimidated.

So I'm very concerned about doing away with that, and especially in view of the fact that the Federal examiners are used as the trigger to determine whether or not to send these observers in. So how do we replace that trigger? But would you mind elaborating on that linkage?

Mr. WEINBERG. Sure. I'd be happy to.

I agree with you a hundred percent that there are hostile polling place officials throughout the country, and that's one of the reasons that I think the Federal Observer provision is so important.

The link I was talking about is it was a specific link to newly federally registered voters, as it existed between 1965 and 1972 in the South. As the Voting Rights Act was constructed, the observers were to watch specifically to see if those particular voters were being hostilely treated in the polls. And the complaint structure of the Federal examiners was as to complaints as to the mistreatment of those newly enfranchised voters.

The passage of time has taken care of many of those situations. Certainly, some of those same areas are areas where Federal observers still would be assigned.

But it's not because those African-American voters have just been put on the roles by a Federal examiner. The problem is both broader and deeper than that. And I think Federal observers are necessary for that.

The Federal Examiner function for registering voters, however, has been—it hasn't been used in 30 years. There were a couple of isolated instances of Federal registration in 1982 and 1993, but apart from that, it hasn't been used since the 1970's, in some part because of the success of the Voting Rights Act, but also because of the enactment of new laws that make voter registration a lot easier—the restrictive hours and locations that people were faced with in the '60's. Now, you can register by mail.

So there are improvements in the voter registration process, and it is the voter registration process and the maintenance of the names of those people who were listed in 1965 to 1972 that the examiner provisions of the Voting Rights Act are geared to.

So it has nothing to do with the need for Federal observers to get information on violations in the polling places—discrimination against racial or language group members. That's going on nationwide, and I think the observers are necessary for that.

Mr. SCOTT OF GEORGIA. Mr. Weinberg, why are then—why was the Federal Examiner certification a prerequisite for bringing in the observers in the first place?

Mr. CHABOT. The gentleman's time has expired, but you can answer the question.

Mr. WEINBERG. All right. The Voting Rights Act after the Selma to Montgomery March brought everything to a head in early 1965. The big focus was on getting people registered to vote. It was—we were talking total disenfranchisement. And so we needed to allow people to get on the voting rolls, and the way that the Voting Rights Act is constructed, if you read the sections 6 and 7, you'll see a very, very intricate pattern of getting people to—into the examiners, to list them, to turn the lists over, and this was a big deal because you were taking a Federal employee, a Federal examiner, and inserting that Federal examiner into what is a State and local process, which is voter registration. The principles of federalism were very, very strong, and this was an extraordinary remedy, the first time ever in this country, that you had these Federal officials coming in and just taking over, just taking over and without a court order. It was just an administrative decision. In order to make that administrative decision have the import that it needed to insert those Federal people into the State function, the Voting Rights Act drafters had the Attorney General personally sign a certification that this was necessary to enforce the 14th amendment and 15th amendment.

And that's how this came to be. The reason they're linked is because the drafters then thought, well, we have all these newly enfranchised voters coming into these terribly hostile polling places, we can't just let them wander in there. But what are we going to do? They say, well, we'll have authorized Federal observers to watch what happens and get the information back to the Attorney

General so the Justice Department could take action if it was needed.

Mr. SCOTT OF GEORGIA. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman's time has expired. The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Ms. Randa, when observers are sent out—have been sent out in the past, has there a history of anybody complaining about the observers. And, if so, what do those complaints normally consist of and who normally makes them?

Ms. RANDA. Any incidents or issues that come up during a given exercise or observation would be put in the report and it is then passed to Department of Justice, who maintains that and decides whether to take any action on it.

We don't actually maintain that information, historically, so I couldn't speak to the record on that. I know anecdotally, years ago, there were sometimes issues getting access and getting friendly treatment. But I don't believe that's been a problem in recent years.

Mr. WATT. Mr. Weinberg, to some extent, what you are proposing is constructing a new model for sending out observers, which I think probably is a reasonably good idea. The prior model applied that the observers to cover jurisdictions, select jurisdictions for sending observers to; isn't that right?

Mr. WEINBERG. Right. The observers in all the specially covered jurisdictions.

Mr. WATT. Is there—in the construction of the new model that you are proposing, if you were constructing a new model that didn't apply only to covered jurisdictions—it applied in some triggering fashion that triggered based on complaints or suspicions, how would you articulate what the standard would be? You said at one point I think in your testimony that you thought maybe the observer provisions ought to be applied nationally. But how would you articulate the standards that you would use to trigger it?

Mr. WEINBERG. Yes. My idea would be to keep the Federal observers tied to the Voting Rights Act enforcement. And you would need a finding by the Justice Department that the provisions of the Voting Rights Act are being violated or actions are happening which would constitute violations of the Voting Rights Act. You need that finding before—

Mr. WATT. Are being violated or—I mean it's too late after they've been violated. The election is taking place. So you'd—I mean you'd have to be looking at some imminent danger.

We presumed under the old framework that there was imminent danger because there was a history, and we know that there is some imminent danger going forward, because people are engaging in this—or appear to be engaging in some conduct. But I'm just trying to figure out how you would articulate what the standard would be for the Justice Department to trigger the observer provisions?

Mr. WEINBERG. Yes. The law now talks about circumstances that appear to be reasonably attributed to violations of the 14th and 15th amendments.